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8-10 13

No. 10382

United States
Circuit Court of Appeals

For the Ninth Circuit.

— 2346

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.


LETTIE LEE, INC., a corporation,
Respondent.

Transcript of Record
In Two Volumes
VOLUME I
Pages 1 to 444

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

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Labor Relations Board

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BOARD'S EXHIBIT No. 1-A

United States of America
Before the National Labor Relations Board

21st Region

Case No. XXI C1807

Date Filed July 25, 1941

In the Matter of

LETTIE LEE INC.

and

INTERNATIONAL LADIES' GARMENT
WORKERS, CUTTERS UNION LOCAL
No. 84, A. F. L.

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Lettie Lee Inc., 719 S. Los Angeles Street, Los Angeles, Calif., has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (1) and (5) of said Act, in that

Since on or about June 1, 1941, and more recently on July 24, 1941, the above named company has refused to bargain in good faith with the International Ladies' Garment Workers, Cutters Union Local No. 84, A. F. L. then and there the duly designated bargaining agency for over 50 percent of the employees of the Cutting Department of said concern in violation of Section 8, subsection (5) of the Act.

That since on or about January 15, 1941, the above named company has, by its officers and agents, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act in violation of Section 8, subsection (1) of the Act; by urging its employees not to join the above named union, by derogatory statements against the officers of the union and by other similar acts and conduct and by all of the foregoing, said Lettie Lee Inc. has violated Section 8, subsection (1) of the Act.

That on account of the foregoing the employees of the Cutting Department of the said Lettie Lee Inc. went out on strike on July 24, 1941.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL LADIES'
GARMENT WORKERS'
UNION, CUTTERS UNION
LOCAL No. 84, A. F. L.,
215 E. 8th St.,
Los Angeles, Cal.

By DAVID SOKOL,
Attorney
756 S. Broadway,
Los Angeles, Calif.

Subscribed and sworn to before me this 25 day
of July, 1941. At Los Angeles, Calif.

WM. R. WALSH
Reg. Director

BOARD'S EXHIBIT No. 1-B

[Title of Board and Cause.]

AMENDED CHARGE

Date filed 11/27, 1941

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Lettie Lee, Inc., 719 So. Los Angeles St., Los Angeles, California, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) (3) and (5) of said Act, in that since on or about July 21, 1941, the above-named company has failed and/or refused to bargain in good faith with International Ladies' Garment Workers' Union, Cutters Local No. 84, A. F. L. as the exclusive representative of its cutters, notwithstanding the circumstance that since the above-mentioned date said labor organization has been designated by a majority of said cutters of said company. Said action on the part of said company constitutes a violation of Section 8, subsections (1) and (5) of said Act.

Since on or about July 5, 1935, the above-named company, acting through its supervisory employees and agents, has interfered with, restrained and

coerced its employees in the exercise of the rights guaranteed to them in Section 7 of said Act, in that it as interrogated its employees with respect to their affiliation with labor organizations, has urged them not to interest themselves in or affiliate with labor organizations, has made derogatory statements against labor organizations, and engaged in similar acts of like force and effect. By the commission of the acts set forth in this paragraph, said company has violated Section 8, subsection (1) of said Act.

On July 24, 1941, the following cutters of said company went on strike by reason of the acts of the said company, as set forth above: Louis Baliber, Nolan Berteaux, Vito N. Cimarusti, Angelo P. Costella, Donald P. Quinn and Joe Sardo.

At various times thereafter said company, acting through its supervisory employees and agents, individually solicited various of the above-named strikers to return to work. Said acts constitute a violation of Section 8, subsection (1) of said Act.

On or about September 9, 1941, said union requested the reinstatement of the above-named strikers. Since that time, however, said company has failed and/or refused to reinstate said strikers. Such failure and/or refusal constitutes a violation of Section 8, subsections (1) and (3) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organiza-

tion, give also the name and official position of the person acting for the organization.)

INTERNATIONAL LADIES'
GARMENT WORKERS'
UNION, CUTTERS LOCAL
No. 84, A. F. L.

By DAVID SOKOL

Attorney
707 S. Hill St.,
Los Angeles, Calif.
TU-8500

Subscribed and sworn to before me this 27 day of November, 1941. At Los Angeles, Calif.

JAMES A. COBEY,
Attorney, National Labor Re-
lations Board, 21st Region.

BOARD'S EXHIBIT No. 1-C

[Title of Board and Cause.]

COMPLAINT

It having been charged by International Ladies' Garment Workers' Union, Cutters Local No. 84, chartered by American Federation of Labor, that Lettie Lee, Inc., hereinafter called "Respondent," has engaged in and is engaging in at Los Angeles, California, certain unfair labor practices affecting commerce as set forth and defined in National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter referred to as "Act," the Na-

tional Labor Relations Board, by its Regional Director for its Twenty-first Region, designated as agent of said Board by Article IV, Section 1, subsection (c) and Article II, Section 5 of its Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Respondent is and, at all times hereinafter referred to, has been a corporation organized and existing under and by virtue of the laws of the State of California. Said Respondent has its principal office and place of business at 719 South Los Angeles Street in the City of Los Angeles, County of Los Angeles, State of California. It is engaged in the manufacture and sale of ladies' dresses and related products.

2. Respondent, in the operation of this business, causes and continuously has caused large quantities of the principal raw materials used by it in its aforesaid business, namely, rayons, threads, buttons, buckles, and zippers to be transported into the State of California from other states of the United States and from foreign countries.

3. Respondent, in the operation of this business, likewise causes and continuously has caused large quantities of ladies' dresses and related products to be transported out of the State of California to states of the United States other than the State of California and to foreign countries.

4. International Ladies' Garment Workers' Union, Cutters Local No. 84, A. F. L., hereinafter called "Union," is a labor organization within the meaning of Section 2, subsection (5) of the Act.

5. A unit for the purposes of collective bargaining composed of all persons employed by the Respondent as full-time cutters would insure to such employees of Respondent the full benefit of their right to self-organization and would otherwise effectuate the policies of the Act. Said unit is, therefore, appropriate for the purposes of collective bargaining between the representatives of such employees and Respondent.

6. By July 21, 1941, or before that date, a majority of the employees of Respondent within the unit set forth in paragraph 5 had designated the Union as their representative for the purpose of bargaining collectively with Respondent with respect to their compensation, hours of employment and other conditions of employment. This majority status of the Union within this unit has continued up to and including the date of this Complaint.

7. On or about July 22, 1941, and at all times thereafter up to and including the date of this Complaint, Respondent, while engaged in its afore-described business, has failed and/or refused and does now fail and/or refuse to bargain collectively in good faith with the Union.

8. By the commission of the acts set out in paragraph 7 and by the commission of each of them, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of the Act.

9. Since in or about September 1938, or prior to that date, and at all times thereafter up to and including the date of this Complaint, Respondent,

while engaged in its aforescribed business and acting through its agents and servants and particularly Lettie Lee, Sam Bothman and Louis Schwartz, has interfered with, restrained, and coerced, and is now interfering with, restraining, and coercing its employees in the exercise of their rights to engage in concerted activities for the purpose of bargaining collectively with Respondent or for other mutual aid or protection in that:

(a) It has continually sought to ascertain and/or has ascertained whether persons seeking employment with it were interested in and/or affiliated with any labor organization and/or particularly the Union.

(b) On or about June 10, 1941, it, acting through the aforementioned Schwartz, made statements to various of its employees derogatory to the Union and on or about June 11, 1941, it, acting through the aforementioned Bothman, made similar statements derogatory to the Union and labor organizations generally in the presence of its cutters and threatened to terminate its business rather than sign a collective bargaining agreement with the Union.

(c) On or about June 13, 1941, it, acting through the aforementioned Bothman, raised the wages of its cutters for the purpose and/or with the effect of discouraging its employees from interesting themselves in and/or affiliating themselves with the Union.

(d) On or about July 24, 25, 26, 27, 28, September 21, 27, October 5, and October 8, 1941,

it, acting through the aforementioned Lee, Bothman and Schwartz, solicited individually various of its employees to return to work after those employees had gone out on strike on July 24, 1941.

10. By the commission of the acts set out in paragraph 9, and by the commission of each of them, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, Subsection (1) of the Act.

11. Respondent, while engaged in its aforedescribed business, on or about September 10th and September 14th, 1941, refused to reinstate to their former or substantially equivalent positions the following named employees who went out on strike on July 24, 1941: Louis Baliber, Nolan Berteaux, Vito N. Cimarusti, Angelo P. Costella, Donald P. Quinn and Joe Sardo, for the reason in whole or part that they and each of them had designated the Union as their representative for the purposes of collective bargaining and otherwise engaged in concerted activities for the purpose of bargaining collectively with Respondent or for other mutual aid or protection. Respondent thereby discriminated in regard to the hire and/or tenure of employment of these employees and each of them, with the purpose and/or effect of discouraging interest in, activity on behalf of, designation of, and/or affiliation with the Union. This refusal to reinstate the aforementioned employees has continued up to and including the date of this Complaint.

12. By the commission of the acts set out in paragraph 11, and by the commission of each of them, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of the Act.

13. The acts of Respondent set out in paragraphs 7, 9, and 11, caused and/or prolonged the aforementioned strike among Respondent's employees which commenced on or about July 24, 1941 and is continuing up to and including the date of this Complaint.

14. Louis Baliber, Nolan Berteaux, Vito N. Cimarrusti, Angelo P. Costella, Donald P. Quinn and Joe Sardo are employees of Respondent within the meaning of Section 2, subsection (3) of the Act.

15. The acts of Respondent set out in paragraphs 7, 9, and 11, occurring in connection with the operation of its business as described in paragraphs 1, 2 and 3, have a close, intimate and substantial relation to trade, traffic, and commerce among the several states of the United States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

16. The acts of Respondent set out in paragraphs 7, 9, and 11, constitute unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1), (3) and (5) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on the 5th day of December, 1941, issues its Complaint against Lettie Lee, Inc., Respondent herein.

NOTICE OF HEARING

Please Take Notice That on the 17th day of December, 1941, in Room 808, United States Postoffice and Courthouse, Los Angeles, California, at 10 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations — Series 2, as amended, Article IV and Article II, Section 23, on the allegations set forth in the Complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twenty-first Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing Complaint, on or before the 17th day of December, 1941.

Enclosed herewith for your information is a copy of the Rules and Regulations, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown directs that a given exhibit need not be duplicated.

In Witness Whereof, the National Labor Relations Board has caused this, its Complaint and its Notice of Hearing, to be signed by the Regional Director for the Twenty-first Region on the 5 day of December, 1941.

[Seal]

WM. R. WALSH,

Regional Director, Twenty-first Region, National Labor Relations Board, Los Angeles, California.

BOARD'S EXHIBIT No. 1-F

[Title of Board and Cause.]

ORDER POSTPONING HEARING

Please Take Notice that the hearing in the above-entitled matter is hereby postponed to January 19, 1942, at 10 o'clock in the forenoon, at the same place as appears in the Notice of Hearing heretofore issued.

It Is Further Ordered that the Respondent's answer must be filed on or before January 9, 1942.

[Seal]

WILLIAM R. WALSH

Regional Director, Twenty-first Region National Labor Relations Board, 808 U. S. Postoffice & Courthouse, Los Angeles, California.

Dated: At Los Angeles, California, this 10th day of December, 1941.

BOARD'S EXHIBIT No. 1-J

ANSWER TO COMPLAINT

Comes Now the Respondent, Lettie Lee, Inc., a corporation, reserving all of its constitutional rights, and excepting and objecting to the jurisdiction of the National Labor Relations Board, in answer to the complaint filed in the above entitled proceeding by the said National Labor Relations Board, now and at all times denying the right of complainant to exert any claims thereunder concerning this respondent, and at all times saving and reserving unto itself all matter of benefit and advantage of exceptions that can or may be taken, of errors, uncertainties, reservations and imperfections contained in said complaint, admits, denies and alleges as follows:

I.

Admits the allegations of paragraph 1.

II.

Admits the allegations of paragraph 2.

III.

Admits the allegations of paragraph 3.

IV.

Respondent has no information or belief sufficient to enable it to answer paragraph 4, and basing its denial upon that ground, denies generally and specifically the allegations thereof.

V.

Denies generally and specifically each and every of the allegations contained in paragraph 5.

VI.

Denies generally and specifically each and every of the allegations contained in paragraph 6.

VII.

Denies generally and specifically each and every of the allegations contained in paragraph 7.

VIII.

Denies generally and specifically each and every of the allegations contained in paragraph 8.

IX.

Denies generally and specifically each and every of the allegations contained in paragraph 9.

Further answering the allegations of said paragraph, respondent alleges that it raised the wages of its cutters at the request of its said cutters, and that said raise was not for the purpose and/or with the effect of discouraging the said employees from interesting themselves in and/or affiliating themselves with any union.

Further answering the allegations of said paragraph, respondent alleges that it has at all times been willing that said employees return to work, and that it is now willing that said employees return to their work.

Respondent further alleges that it has requested

the said employees to return to their work, but that said employees have refused so to do.

X.

Denies generally and specifically each and every of the allegations contained in paragraph 10.

Further answering the allegations of said paragraph, respondent specifically denies that it has in any manner engaged in any unfair labor practices within the meaning of Section 8, subsection (1) of the National Labor Relations Act, or any other part or portion thereof, whether as alleged in said complaint or otherwise.

XI

Denies generally and specifically each and every of the allegations contained in paragraph 11.

Further answering the allegations of said paragraph, respondent alleges that it has requested its said employees to return to their work and has offered to reinstate the said employees to their former positions. That said employees have refused and still refuse to return to their work. That respondent has at all times been and now is ready and willing to allow and permit said employees to return to their work, and to reinstate the said employees in their former positions.

XII.

Denies generally and specifically each and every of the allegations contained in paragraph XII.

Further answering the allegations of said paragraph, Respondent denies that it has engaged or is

now engaging in any unfair labor practices within the meaning of Section 8, subsections (1) and (3) of the National Labor Relations Act, or any other part or portion thereof, whether as alleged in paragraph 11 of said complaint or otherwise.

XIII.

Denies generally and specifically each and every of the allegations of paragraph 13.

XIV.

Denies that the employees named in paragraph 14 of said complaint are employees of respondent within the meaning of Section 2, subsection (3) of the National Labor Relations Act.

XV.

Denies generally and specifically each and every of the allegations of paragraph XV.

XVI.

Denies generally and specifically each and every of the allegations of paragraph 16.

For a Further, Separate and Affirmative Defense to Said Complaint, Respondent Alleges:

I.

That at all times mentioned in plaintiff's complaint and now respondent employs substantially in excess of 115 persons in connection with its business of manufacturing and selling of ladies' dresses and garments. That at all times mentioned in plaintiff's complaint, respondent employed 15 per-

sons in its cutting department. That the six employees referred to in said complaint, namely, Louis Baliber, Nolan Berteaux, Vito N. Cimarusti, Angelo P. Costella, Donald P. Quinn and Joe Sardo, do not constitute a majority of the persons employed in the cutting department of respondent's place of business.

For a Further, Separate and Second Affirmative Defense to Said Complaint, Respondent Alleges:

I.

That when the strike referred to in said complaint was called by the Union and at the time thereof, to-wit, on or about July 24, 1941, only approximately twenty out of all of respondent's employees went on strike and left respondent's employment. That the vast majority of respondent's employees refused to strike or leave their employment and have continued in the employ of respondent, and are still in the employ of respondent.

That said union has never represented and does not now represent a majority of the persons employed by respondent, and does not represent the employees of respondent for the purposes of collective bargaining.

As a Further, Separate and Third Affirmative Defense, Respondent Alleges:

I.

That the cutting department or the cutters of respondent's factory do not constitute an appro-

priate unit for the purpose of collective bargaining. That respondent's entire shop and plant is the unit appropriate for the purposes of collective bargaining within the meaning of Section 9 of the National Labor Relations Act. That by reason of the fact that the said cutting department or said cutters do not constitute the unit appropriate for the purpose of collective bargaining, as hereinbefore alleged, and for the further reason that the union does not in any event represent a majority of the persons employed in said cutting department, and for the reason that respondent's entire plant or factory is the unit appropriate for the purposes of collective bargaining within the meaning of said Act, the said union is not the legal or lawful representative of any of respondent's employes for the purpose of collective bargaining or otherwise, and respondent has not been and is not now under any obligation to negotiate with said union for said reasons.

For a Further, Separate and Fourth Affirmative Defense, Respondent Alleges:

I.

That respondent has at all times denied and now denies that the said union is the lawful or legal representative of any of its employees for the purposes of collective bargaining within the meaning of Section 9 of the National Labor Relations Act. That the said union has never been certified or otherwise designated by the Board as the legal and proper representative of respondent's employees

or any of them, and until such time as the said union is certified as the representative of plaintiff's employees, respondent is under no obligation to negotiate with said union.

Wherefore, respondent prays that the complaint and charge be forthwith dismissed.

SAM WOLF & LEO SHAPIRO
By LEO SHAPIRO

Attorneys for Respondent,
Lettie Lee, Inc.

State of California,
County of Los Angeles—ss

Sam Bothman, being by me first duly sworn, deposes and says: that he is the Secretary-Treasurer of Lettie Lee, Inc., the respondent in the above entitled action; that he has read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true. That he is authorized to make this verification for and on behalf of said corporation, Lettie Lee, Inc.

SAM BOTHMAN

Subscribed and sworn to before me this 20th day of January 1942.

[Seal] LEO SHAPIRO

Notary Public in and for the County of Los Angeles,
State of California.

Received copy of the within Answer this 20 day of January, 1942.

MAURICE J. NICOSON

Attorney for National Labor
Relations Board

[Title of Board and Cause.]

Messrs. Maurice J. Nicoson and Charles M. Ryan,
for the Board.

Mr. Leo Shapiro,
of Los Angeles, Calif.,
for the respondent.

Mr. David Sokol,
of Los Angeles, Calif.,
for the Union.

INTERMEDIATE REPORT

Statement of the Case

Upon an amended charge duly filed on November 27, 1941, by International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated December 5, 1941, against Lettie Lee, Inc., Los Angeles, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor

practices within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by a notice of hearing, were duly served upon the respondent and the Union.

With reference to the unfair labor practices, the complaint alleged in substance (1) that since in or about September 1938, the respondent interfered with, restrained, and coerced its employees in the exercise of their rights to engage in concerted activities for the purpose of bargaining collectively with the respondent; (2) that on or about July 22, 1941, and at all times thereafter, the respondent refused to bargain collectively in good faith with the Union as the representative of its employees within an appropriate unit; and (3) that on or about September 10 and September 14, 1941, the respondent, refused to reinstate to their former or substantially equivalent positions six employees named in the complaint,¹ who went on strike July 24, 1941, for the reason that they had designated the Union as their representative for the purposes of collective bargaining and otherwise engaged in concerted activities for the purpose of bargaining collectively with the respondent or for other mutual aid or protection.

On January 20, 1942, the respondent filed an answer admitting certain allegations with respect

(1) The employees named in the complaint were as follows: Louis Baliber, Nolan Berteaux, Vito N. Cimarusti, Angelo P. Costella, Donald P. Quinn, and Joe Sardo.

to its business, but denying that it had engaged in any unfair labor practices.

Pursuant to notice, a hearing was held at Los Angeles, California, January 19, 20, 26, 27, 28, and 29, 1942, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented by counsel. All parties participated in the hearing and were afforded an opportunity to examine and cross-examine witnesses and to introduce evidence bearing upon the issues. At the close of the Board's case, the respondent moved to dismiss the complaint. The motion was denied. At the close of the hearing, the undersigned granted without objection a motion of the Board to conform the pleadings to the proof. The respondent renewed its motion to dismiss the complaint. Ruling on this motion was deferred. It is hereby denied. The parties were afforded an opportunity to argue orally before the undersigned and were advised that they might file briefs with the undersigned within fifteen days from the close of the hearing. All parties waived argument. Thereafter the respondent and the Union filed briefs with the undersigned. The undersigned has duly considered both briefs.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. The business of the respondent²

Lettie Lee, Inc. is a California corporation engaged in the manufacture of dresses. Its office and place of business is in Los Angeles, California. In the conduct and operation of its business it uses rayons, threads, buttons, buckles and zippers. During the fiscal year ending March 31, 1940, it purchased such materials in the amount of \$151,000, of which amount \$136,000 represented purchases from sources located outside the State of California. During the calendar year ending December 31, 1940, it made sales of its products amounting to \$397,000. Of that amount \$250,000 represented sales made to purchasers located outside the State of California. The officers of Lettie Lee, Inc. are Lettie Lee, president, Mrs. R. H. Thain, vice president, and Sam Bothman, secretary-treasurer. Bothman is also the active manager of the plant. Lettie Lee, Inc. conceded at the hearing that it is engaged in interstate commerce within the meaning of the Act.

II. The organization involved

International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, is a labor organization admitting to membership all persons employed by the respondent as full-time cutters.

(2) Taken mainly from a stipulation entered into at the hearing.

III. The unfair labor practices

A. Sequence of events; interference, restraint and coercion

In January 1940, Angelo Costella applied for a job as a cutter. On that occasion he was asked by Sam Bothman, the respondent's general manager, if he was a union man. Costella replied that he was not, and was hired. Later that same year Vito Cimarusti made application for a job as a cutter. Bothman asked him if he belonged to the cutters' union. Cimarusti answered that he did not, and that he knew nothing about unions. Thereafter, in February 1941, he was hired. Bothman testified that he asked similar questions of several of his employees for the reason that "most of (his) employees did not belong to a union, and sometimes a person would be uncomfortable if they did."

The undersigned finds that the respondent, by seeking to ascertain whether persons seeking employment with it were interested in or affiliated with any labor organization, particularly with the Union, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On June 11, 1941, Bothman met with the male cutters,³ in response to a demand made by them for

(3) The respondent employs approximately 110 production workers classified on its pay roll as designers, cutters, assorters, operators, drapers, pressers, finishers, time workers, and sample makers. Of the ten workers listed as cutters on June 11, 1941, eight were male employees: viz., Louis Swartz,

an increase in wages. The meeting was held in the plant after working hours. Bothman's first words were, "How many of you belong to the Union or intend joining the Union?" He received no answer. He told them of a pending strike in the industry; that he felt safe in talking to the cutters; and that he felt they would not join a strike if one was called. He then told them that the Union was not out to help them, that it could not do them any good, and that its officials were "a bunch of shysters." He further stated that "the Union was out to stuff this place full of cutters and keep you fellows from getting all the work you should have, and you will have to split it up with the new fellows we will have to put on." He advised the cutters that he would not have anything to do with the Union and that he would "sooner close up this place than operate under a bunch of shysters." He also related an experience that he had once had with a union when the cutters were trying to "run the place," as the result of which he had to "clear out." Bothman offered the cutters the choice of a raise in wages, which he said would necessitate the respondent's hiring of another cutter to avoid paying for overtime work, or continuing at the same

Vito Cimarusti, Angelo Costella, Mortimer Litwin, Joe Sardo, Louis Baliber, Don Quinn, and Nolan Berteaux, and two were female employees, viz., Eunice Usher and Katherine Lembke. Louis Swartz is the head cutter and is in general charge of the other cutters. He is regarded by his fellow employees as the foreman of the cutting room, and as having supervisory powers.

wages with the usual amount of overtime work. Over the period of a year, according Bothman, this would amount to more than would the raise in wages without overtime. He asked the cutters to decide which of the "alternatives" they preferred, and left the meeting.

The cutters decided to stand by their demand for a raise. Accordingly, on June 13, they again met with Bothman. Bothman told the cutters that he understood that they had decided to stand by their demand; that a 15 cent per hour increase would be effective immediately; that he did not want the cutters to have any dealings with the Union; and that they should keep information as to the raise from the other employees.

The undersigned finds that the respondent, by Bothman, on June 11, 1941, made statements to various of its employees derogatory to the Union and threatened to terminate its business rather than sign a collective bargaining agreement with the Union. In so doing, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

During June and July, the International Ladies' Garment Workers' Union,⁴ of which the Union is an autonomous part, made plans to effect the organization of unorganized dress manufacturing plants in the Los Angeles area. As part of its program, a committee of three was appointed to order a strike of dress manufacturing plants on a

(4) Hereinafter referred to as the International.

date to be determined by the committee. It sent letters to the companies involved, asking that they confer with the International regarding the workers in their plants. Early in July it sent such a letter to the respondent. The respondent neither answered nor acknowledged the letter. In the meantime, Harry Scott, then organizer and representative of the Union, solicited the membership of the full-time cutters of the respondent.

On July 21, Cimarusti, Sardo, Costella, Berteaux, Baliber, and Quinn, all full-time cutters, went to the office of the Union and signed membership application cards.

On the following day, July 22, Scott telephoned David Sokol, the attorney for the Union, and requested him to arrange a conference with the respondent for the purpose of collective bargaining on behalf of the cutters. Sokol telephoned the office of the respondent and asked for Bothman. He did not talk to Bothman, but gave his name and telephone number to the respondent's telephone operator. On the following day, July 23, Sokol again telephoned the respondent's office and asked for Bothman. He did not get to talk to Bothman. He asked the operator why Bothman had not returned his call and asked her to give Bothman a message that he (Sokol) represented the Union, and that it desired to enter into negotiations with the respondent; and that if the respondent did not recognize the Union, inasmuch as it represented the majority, there was a possibility of a strike because of the company's "unfair labor practices."

That night the strike committee of the International met. It received a report from Scott that a majority of the respondent's cutters had organized and was told of Sokol's failure to get in touch with Bothman. Acting upon this information, the committee included the respondent as one of the companies that was to be struck. At midnight, the strike committee advised Scott that it had called an industry-wide strike⁵ in Los Angeles for 6 o'clock the next morning and that a picket line would be established about the plant of the respondent.

On the morning of July 24, the strike was called. The male cutters joined, and gathered in a nearby cafe where they were used to meeting. Later the same day, Bothman appeared at the cafe. He told the cutters that he was surprised that they had joined the strikers; that he thought they were a "bunch of fools"; that they should not be "chumps"; and that "any of you want to come back to work, come back with me right now."

During the day of July 24, and on the following day, Sokol made several attempts to talk to Bothman on the telephone. He reiterated to the respondent's telephone operator that Bothman should speak to him or to some other representative of the Union with respect to "entering into a bargaining relationship," and stated that Bothman's failure

(5) The record does not reveal clearly whether the strike was to be one of all employees in the unorganized dress manufacturing establishments, or one merely confined to cutters.

to respond to Sokol's calls "aggravated the situation." The respondent still failed to call Sokol.

On July 26, Bothman telephoned Cimarusti and expressed surprise that the cutters had gone on strike, because he had treated them "all right." He told Cimarusti that "those shysters up there, they can't do anything for you. They are looking out for themselves . . . The rest of the boys are working, some of them are coming in Monday to work for me. I want you to come in." Bothman further told him that if he had to "sign up with the Union that night, he would close up, Lettie Lee (the respondent's president) would go to Texas and he would open another shop, or do something." About a month later, Bothman met Cimarusti in the lobby of the building which houses the respondent's plant. On this occasion Bothman said to Cimarusti, "Don't be a damn fool. Go on up and go to work."

Early in October, Bothman met Quinn, Berteaux, and Cimarusti on the picket line. Bothman told them that he would have nothing to do with "those shysters up there" but wanted the three of them to return to work. One of the three told him that for such a thing to happen it was necessary for him to talk to the Union. Bothman replied, "No, I am talking to you as individuals. I am not going to talk to you in a group, or as a Union." Bothman then called into the group a friend of his who was standing close by and asked him to be a witness to what was being said. Bothman continued to urge Quinn, Berteaux, and Cimarusti to return to work. One of the three then asked as to the status of

Costella, Sardo and Baliber. Bothman told them that Costella and Baliber were trouble makers and "stinkers," that Sardo was an ex-convict, and that he would not take any of them back to work in the plant.

On or about October 8, Quinn went to the home of Foreman Swartz in response to Swartz' invitation. Swartz told Quinn that a full crew was working in the cutting room, but that he wanted Quinn to return to work. When Quinn told him that if he came back it would have to be with the rest of the striking cutters, Swartz replied:

That will never happen. You fellows haven't got a chance. I better let you know now. You just haven't got a darned chance. The Union is going to drop you in a couple of weeks. I have the inside information, and I know that the Union is going to drop you in a couple of weeks, and you won't be able to get a job anywhere in town. You will be blacklisted.

In the same conversation, Swartz told Quinn that Bothman was trying to get a contract with the Government to make uniforms, and said, "You know, the Union isn't going to strike against the Government." Swartz also reiterated that Bothman "would never sign a contract, he would close the shop first." Swartz then advised Quinn to talk to Cimarusti and Berteaux.

A day or two after his conversation with Quinn, Swartz telephoned Cimarusti. Swartz asked Cimarusti if Quinn had talked to him. Cimarusti replied in the affirmative, and said that the cutters

were not going to return to work except as a group. Swartz told Cimarusti that he was a fool, because the Union was not going to do anything for him; that several unions and the respondent had joined with the "M & M,"⁶ and that the "M & M" would protect the workers. He told Cimarusti that the respondent would close up rather than sign a contract with the Union.

The undersigned finds that the respondent, on July 24, 26, and on subsequent dates, solicited various of its employees individually to return to work after they had gone out on a strike, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. The refusal to bargain

1. The appropriate unit

The complaint alleges, and the Union contends, that all persons employed by the respondent as full-time cutters constitute an appropriate unit for the purpose of collective bargaining. The respondent contends that (1) all production employees constitute the appropriate unit;⁷ (2) that if that unit be

(6) The "M & M" refers to the Merchants and Manufacturers Association of Los Angeles. See Sun-Tent Luebbert Co., et al., 37 N.L.R.B., No. 15.

(7) In support of this contention the respondent made proof of a contract between the International and the Dress Association of Los Angeles wherein it is provided that "Contracts made by the Union with employers who are not signatories to this collective bargaining agreement shall not extend

not appropriate, then all of the persons employed in the cutting room compose the appropriate unit; and (3) if bundlers, who work in the cutting room, should be excluded from the latter unit, then the appropriate unit consists of 12 employees classified by the respondent on its pay roll of July 25, 1941, as cutters.

As above set forth, the employees of the respondent are classified on its pay roll as designers, cutters, assorters, operators, drapers, pressers, finishers, time workers, and sample makers. The evidence amply supports a finding that from the time a style of dress is created until it is manufactured and ready for shipment, it must pass through and receive

for a period longer than this agreement, and shall be controlled by this exact agreement." The agreement covered most of the crafts of the dress industry, including the cutters. Even should the quoted clause be of value in the determination of the appropriate unit as historical background, still it is of value only if in so considering it, it assists in the effectuation of the Act. The facts in this case amply justify the finding that only the recognition of the cutters as a unit will result in immediate collective bargaining. The respondent further contended that the Union was not of such an autonomous nature that it could command collective bargaining in the face of an industry-wide strike. The facts clearly show that the cutters was the first craft in the industry, that it was organized more than 50 years ago, that since its organization it has upheld its prestige against aggression, and that in spite of amalgamations and reorganizations of unions in the industry it still has its own locals, elects its own officers, and is represented by one of its own members when matters concerning its members are involved.

service from employees in each of the above classifications. The operations in the plant are continuous. However, in this case, no group other than the full-time cutters has ever been organized, nor is any organization seeking to represent employees of the respondent other than the full-time cutters. Further, the respondent, as found in Section III A above, has adequately expressed its disdain toward the Union and collective bargaining generally. Under the circumstances, the contentions of the respondent that a unit other than one composed of full-time cutters, are untenable. To find otherwise would deprive the full-time cutters of the benefits of collective bargaining until the remaining production employees had organized.⁸

The cutting room consists of an area partially enclosed by a partition. Within this area are the cutting tables, tools and instruments used by the cutters, and shelves upon which the materials are kept. On July 22, 1941, there were employed therein four assorters or bundlers, one stock girl, and ten persons classified on the pay roll as cutters. The assorters or bundlers and the stock girl, admittedly are not cutters. The cutters, so named, all of whom are contended by the respondent to be within the unit alleged in the complaint, are Swartz, Cimarusti, Costella, Sardo, Baliber, Quinn, Berteaux, Mortimer Litwin, Eunice Usher, and Dorothy Richards. The first eight of the named cutters are admittedly full-time cutters. The respondent contends that Robert

(8) See *Crescent Dress Co. and Cutters Local 11, I.L.G.W.U., A. F. of L., 29 N.L.R.B., No. 67.*

Thain and Katherine Lembke should be added to that list as cutters.

A cutter, in his normal duties, prior to July 24, 1941, at the respondent's plant, got at the commencement of a day a paper, known as a marker, of a creation that in the run of the factory became a dress. That marker is analagous to the blue-print of an architect to a contractor for the construction of a building. From the marker, he made cuts, giving particular care to the grain of the material and size of dress required. From those cuts a dress was manufactured. If orders deflected from the marker, he sized his material accordingly.

In the making of a dress it is necessary to make trimmings. It is also necessary that padding be cut for sleeves, shoulders, belts, etc. Also it is necessary that sloping be done when pleats, etc., are called for in a dress. The latter operations require care less skillful than the operations of a cutter. The reason is that a trimmer or a sloper is concerned with the cutting of a detail of the garment, whereas the cutter is charged with the exact cutting of the garment as a whole. In the Union, no one is eligible to membership except those who perform all of the operations required of a cutter.⁹

(9) In this case, the Union, after investigation, was satisfied that Cimarusti, Baliber, Costella, Berteaux, Quinn, and Sardo were eligible to membership. The respondent countered with the contention that it was operating a "1941" plant and that the exaction and precision previously required of a cutter in a plant were, therefore, not required of its cutters. The cutters were not so regarded prior to the strike.

Dorothy Usher is a qualified cutter. She was not so employed on July 22, nor were her qualifications known to the Union before the hearing. Prior to July 22, most of Usher's duties consisted of sloping. She was not engaged by the respondent as a full-time cutter. Neither was she eligible to membership in the Union.¹⁰

Katherine Lembke was not eligible to membership in the Union on July 22.¹¹ Prior to that date she spent the biggest portion of her time, as an employee of the respondent, cutting padding from cotton batting. The proof shows, however, that she is capable of performing the duties of a cutter.

Dorothy Richards is a qualified cutter. Prior to July 22 her time as an employee was occupied chiefly in sloping. She left the employ of the respondent in the fall of 1941 and does not intend to return.

Robert Thain is a brother of Lettie Lee, the president of the respondent. Early in January 1941 he left the employ of the respondent for an indefinite period. At the time that he left he was told by Bothman that if he ever returned he could have his job again. When he left, he was a full-time cutter. He returned in December 1941.

The undersigned finds that Usher, Lembke and

(10) The Union accepts to membership qualified female cutters.

(11) The Board contends, further, that Lembke was not properly within the unit because she left the employ of the respondent in May 1941. The proof shows that she was on leave of absence for a definite period.

Richards were not full-time cutters on July 22, 1941, and that Thain was not an employee of the respondent on that date. He also finds that the respondent recognized the claimed unit on June 11 and 13 when it bargained with the cutters, granted them a wage increase, and admonished them to keep the fact secret from other employees. He further finds that Swartz, Cimarusti, Costella, Sardo, Baliber, Quinn, Bertreaux and Litwin were the only full-time cutters on the respondent's pay rolls for the week ending July 25, 1941, and that the persons employed by the respondent as full-time cutters, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, and that said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Union of a majority in the appropriate unit

Of the eight employees found to be within the appropriate unit, six signed applications for membership in the Union and requested it to bargain for them on July 21, 1941. Litwin thereafter personally informed Sokol on July 24, 1941 that he desired the Union to represent him.

The undersigned finds that on July 21, 1941, and at all times thereafter, the Union was the duly designated representative of a majority of the respond-

ent's employees in the appropriate unit, and that by virtue of Section 9 (a) of the Act it was the exclusive representative of all the employees in said unit for the purposes of collective bargaining with the respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

As above found, the respondent, on July 22, 23, 24, and 25, was requested to talk to Sokol or a representative of the Union for the purpose of bargaining in behalf of the cutters. This the respondent did not do.¹² Since those dates the respondent, by Bothman and Swartz, advised its employees that it would not having anything to do with the Union.

The undersigned finds that on July 22, 1941, and at all times thereafter, the respondent refused to bargain collectively with the Union as the exclusive

(12) The respondent contends that it refused to bargain because of the inappropriateness of the unit contended for by the Union. It claimed at the hearing that it would have bargained with its employees on the basis of an industrial unit. In view of all the facts, the undersigned finds this contention without merit. Assuming that the respondent believed the unit claimed by the Union to be inappropriate; it should have met with the Union's representatives to discuss the unit for which the Union contended and to advance its own ideas of what constituted an appropriate unit. This it did not do. It is evident from the record as a whole that the respondent's questioning of the appropriate unit was an afterthought, and that its real reason for refusing to meet with representatives of the Union was the desire of the respondent to avoid bargaining collectively with its employees.

representative of its employees within an appropriate unit, and that the respondent here thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

C. The discriminatory refusals of reinstate

1. The cause of the strike

As above found, the International ordered the plant of the respondent struck on July 24, 1941, after Scott had reported to it that a majority of the respondent's full-time cutters had joined the Union and that the respondent had failed to heed the telephone calls of Sokol. The undersigned has found that this failure constitutes a violation of Section 8 (5) of the Act. The undersigned finds that the strike which commenced on July 24, 1941, was caused by the unfair labor practices of the respondent. During the strike the respondent on repeated occasions sought to persuade its employees to abandon the strike, and sought to split the ranks of the strikers by stating that it would take back some of the strikers but would not take back others. These acts of the respondent constituted additional unfair labor practices. The undersigned finds that these additional unfair labor practices served to prolong the strike.

2. The refusals to reinstate

On September 9 and 13, 1941, Sokol mailed letters to the respondent, wherein he requested the respondent to reinstate Costella, Cimarusti, Ber-teaux, Baliber, Sardo, and Quinn. They have not

been reinstated. In its answer the respondent avers that "it has at all times been willing that said employees return to work, and that it is now willing that said employees return to their work . . . that it has requested the said employees to return to their work, but that said employees have refused so to do."

The record is bare of any testimony that would sustain that averment of the respondent, except that Cimarusti, Quinn, and Berteaux were invited to return to their jobs on the condition that they return as individuals without the prestige of the Union. The undersigned finds that those acts of the respondent, as set forth fully in Section III A, violated Section 8 (3) of the Act and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.

At the hearing Bothman testified, and in its brief the respondent contends, that Sardo is not entitled to reinstatement because he is admittedly an ex-convict, having been convicted in Wisconsin of stealing 200 suits of clothes from a former employer. He was convicted of the crime, served his sentence, and has served his parole. The fact of Sardo's conviction came to the attention of Bothman shortly after the strike began.

It will be remembered that, early in October, Bothman told Cimarusti, Quinn, and Berteaux that he would not take back to work Costella and Baliber because they were trouble makers and "stinkers," and that he would not reemploy Sardo because

he was an ex-convict. The respondent offered no evidence to prove that Costella and Baliber were trouble makers and "stinkers."

The answer of the respondent is signed by Bothman and is sworn to by him. It states that the respondent offered to take back all of its striking employees, and has at all times stood ready and willing to do so. In view of this, the undersigned finds that Sardo's criminal record was not in fact the true reason for refusing him reinstatement, but that the reason lay in the fact that the respondent would not reinstate any of the six full-time cutters herein referred to, unless they returned to work as individuals and not as a group represented by the Union.¹³

As found above, the strike was caused and continued by the unfair labor practices of the respondent. Since Cimarusti, Quinn, Berteaux, Sardo, Baliber, and Costella went on strike as the result of these unfair labor practices, the respondent was under a duty to reinstate them to their former or substantially equivalent positions upon application therefor. The respondent, however, has not done so, thereby discriminating against them because of their concerted activity.

The undersigned finds that the respondent, on or about September 10, 1941, and thereafter, discriminated against Cimarusti, Quinn, Berteaux, Sardo, Baliber, and Costella in regard to hire and tenure

(13) See Chesapeake Shoe Manufacturing Company and United Shoe Workers of America, 12 N.L.R.B. 832.

of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The undersigned finds that the activities of the respondent as set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead, and have led, to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondent has engaged in and is engaging in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees, in an appropriate unit. It will be recommended that the respondent, upon request, bargain collectively with the Union as such representative with respect to rates of pay, wages, hours of employment, or other conditions of employment and if an understanding is reached on such matters, to embody said understanding in a signed, written contract.

It has been found that the unfair labor practices

of the respondent caused and prolonged a strike which began on July 24, 1941. As above found, employees Louis Baliber, Nolan Berteaux, Vito N. Cimarusti, Angela P. Costella, Donald P. Quinn, and Joe Sardo went on strike that day because of the unfair labor practices of the respondent. All of these employees asked for reinstatement on or about September 10 and 13, 1941, and failed to receive it. It will be recommended that the respondent offer to each of the above named employees immediate reinstatement to his former or substantially equivalent employment. The offers of reinstatement shall be without prejudice to their seniority or other rights and privileges. It will be recommended that, to effectuate the policies of the Act, the respondent make whole Louis Baliber, Nolan Berteaux, Vito N. Cimarusti, Angelo P. Costella, Donald P. Quinn, and Joe Sardo for any loss of pay they may have suffered by reason of the respondent's unfair labor practices as above set forth, by payment to each of them of a sum of money equal to that which he normally would have earned as wages from September 9, 1941, to the date of the offer of reinstatement, less his net earnings¹⁴ during that period.

(14) By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local

Upon the basis of the above findings of fact and upon the entire record in this proceeding, the undersigned makes the following:

CONCLUSIONS OF LAW

1. International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, is a labor organization within the meaning of Section 2 (5) of the Act.

2. All persons employed by the respondent as full time cutters at all times material herein constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, is and at all times since July 22, 1941, has been, the exclusive representative of all the employees in the above unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on July 22, 1941, and at all times thereafter, to bargain collectively with the International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, as the exclusive representative of the

2590, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See Republic Steel Corporation v. N.L.R.B., 311 U.S. 7.

employees in the above named unit, the respondent, Lettie Lee, Inc., has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By discriminating with regard to the hire and tenure of employment of Louis Baliber, Nolan Ber-teax, Vito N. Cimarusti, Angelo P. Costella, Donald P. Quinn, and Joe Sardo and thereby discouraging membership in International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, the respondent, Lettie Lee, Inc., has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent, Lettie Lee, Inc., has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

8. The strike which began on July 24, 1941, was caused by the respondent's unfair labor practices.

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the respondent, Lettie Lee, Inc., its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Ladies' Garment Workers' Union, Cut-

ters Local No. 84, affiliated with the American Federation of Labor, as the exclusive representative of all persons within the appropriate unit, with respect to rates of pay, wages, hours of work, or other conditions of employment;

(b) Discouraging membership in International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, or any other labor organization of its employees, by discriminating with regard to hire and tenure of employment or any other term or condition of their employment;

(c) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activity for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with the International Ladies' Garment Workers' Union, Cutters Local No. 8, affiliated with the American Federation of Labor, as the exclusive representative of all persons employed by the respondent within the unit hereinbefore found to be appropriate, with respect to rates of pay, wages, hours of work, and other conditions of employment, and if an understanding is reached on such matters, em-

body such understanding in a signed written contract;

(b) Offer to Louis Baliber, Nolan Berteaux, Vito N. Cimarusti, Angelo P. Costella, Donald P. Quinn, and Joe Sardo immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, displacing, if necessary, employees hired since July 24, 1941;

(c) Make whole Louis Baliber, Nolan Berteaux, Vito N. Cimarusti, Angelo P. Costella, Donald P. Quinn, and Joe Sardo for any loss of pay they may have suffered by reason of respondent's discrimination with regard to hire and tenure of employment and terms and conditions of their employment by payment to them of a sum of money equal to that which each of them normally would have earned as wages from the date of the respondent's discrimination to the date of the offer of reinstatement, less their net earnings¹⁵ during this period;

(d) Post immediately in conspicuous places throughout its plant in Los Angeles, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices that the respondent will not engage in the conduct from which it has been recommended that it cease and desist in paragraphs 1 (a), (b), and (c) of these recommendations; that it will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of these recommendations; and that the re-

(15) See footnote 14, *supra*

spondent's employees are free to become or remain members of International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership or activities in that organization;

(e) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report, respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article 2 of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended—any party may, within thirty (30) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article 2 of the said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceedings (including rulings upon all motions or objections) as it relies upon, together with the original and

four copies of a brief in support thereof. As further provided in Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within twenty (20) days after the date of the order transferring the case to the Board.

Dated: March 21, 1942.

GUSTAF B. ERICKSON,
Trial Examiner.

[Title of Board and Cause.]

EXCEPTIONS TO INTERMEDIATE REPORT

Comes Now the Respondent, Lettie Lee, Inc., and hereby excepts and objects to the Findings of Fact and Conclusions of Law and to the recommendations of Gustaf B. Erickson, Trial Examiner, as contained in that certain intermediate report in the above entitled matter under date of March 21, 1942, and to the whole thereof, and does hereby specifically and expressly except and object to the Findings of Fact, Conclusions of Law and recommendations contained therein on the following grounds, to-wit:

1. That the various matters and things alleged and set forth in paragraph III, subdivision (A) do not constitute unfair labor practices within the meaning of the National Labor Relations Act or any part or portion thereof, and do not con-

stitute a violation of the National Labor Relations Act or any part thereof.

2. That the alleged unfair labor practices set forth and referred to in paragraph III, subdivision (A) are not supported by the evidence.

3. That the alleged conversations between Louis Schwartz and Quinn and Cimarusti, referred to in paragraph III, subdivision (A), are hearsay and not binding on Respondent, and that Respondent's objection thereto on said ground should have been sustained, and Respondent's motion to strike the same on said ground should have been granted, and that said testimony should be disregarded.

4. That it affirmatively appears from paragraph III, subdivision (B), sub-subdivision 1, as follows:

(a) That the cutters do not constitute an appropriate unit for the purpose of collective bargaining;

(b) That all of the production employees of Respondent's factory constitute the appropriate unit for the purpose of collective bargaining, and that the International Ladies' Garment Workers' Union, Cutters Local 84, A.F.L., does not represent a majority of said unit for the reason that it represents only six out of approximately 110 production employees;

(c) That if all production employees do not constitute the appropriate unit that then the appropriate unit consists of all persons employed in the cutting room; that the total number of said persons is sixteen and that the union does not represent a majority of said unit;

(d) That the union does not represent a majority of the cutters for the reason that as of July 24, 1941, the date the strike was called, Respondent employed 12 cutters, and that the union claims only six as members, and therefore does not represent a majority of said cutters.

5. That the finding contained in said paragraph III, subdivision (B), sub-subdivision 1,

(a) That Dorothy Usher, Katherine Lembke and Dorothy Richards were not full time cutters is not supported by the evidence;

(b) That Robert Thain was not an employee of Respondent on July 22, 1941, is not supported by the evidence;

(c) That Respondent recognized the cutters as the appropriate unit on June 11 and 13 when it granted a wage increase to the men cutters is not supported by the evidence;

(d) That Schwartz, Cimarusti, Costella, Sardo, Baliber, Quinn, Berteaux and Litwin were the only full-time cutters is not supported by the evidence.

6. That the finding in paragraph III, subdivision (B), sub-subdivision 2, that on July 21, 1941, and at all times thereafter, the union was the representative of a majority of Respondent's employees in the appropriate unit, and that by virtue of Section 9 (a) of the National Labor Relations Act it was the exclusive representative of all the employees in said unit for the purposes of collective bargaining with Respondent in respect to rates of pay, wages, hours of employment and other con-

ditions of employment, is not supported by the evidence.

7. That the finding contained in paragraph III, subdivision (B), sub-subdivision 3, that on July 22, 1941, and thereafter Respondent refused to bargain collectively with the union as the exclusive representative of its employees within an appropriate unit is not supported by the evidence, in that the claimed unit, to-wit, the cutters, is not the appropriate unit and in any event the union does not represent a majority of the cutters in said unit and, therefore, Respondent was under no obligation to bargain with the union as it did not represent a majority within an appropriate unit.

8. That the findings contained in paragraph III, subdivision (C), sub-subdivision 1,

(a) That the strike which commenced on July 24, 1941, was caused by the unfair labor practices of Respondent is not supported by the evidence;

(b) That Respondent committed additional unfair labor practices during the strike, and that the said alleged additional unfair labor practices served to prolong the strike is not supported by the evidence.

9. The finding contained in paragraph III, subdivision (C), sub-subdivision 2, that Respondent interfered with, restrained and coerced its employees, or that it committed any acts which amount to interference, restraint or coercion of its employees is not supported by the evidence.

10. The finding contained in paragraph III, sub-

division (C), sub-subdivision 2, that Joe Sardo's criminal record was not the true reason for refusing him reinstatement is not supported by the evidence.

11. The finding in paragraph III, subdivision (C), sub-subdivision 2, that the strike was caused and continued by unfair labor practices of Respondent is not supported by the evidence.

12. The finding in paragraph III, subdivision (C), sub-subdivision 2, that Cimarusti, Quinn, Berteaux, Sardo, Baliber, Costella went on strike as a result of unfair labor practices and that Respondent was under a duty to reinstate them to their former or substantially equivalent positions is not supported by the evidence.

13. The finding contained in paragraph III, subdivision (C), sub-subdivision 2, that Respondent on or about September 10, 1941, and thereafter discriminated against Cimarusti, Quinn, Berteaux, Sardo, Baliber and Costella in regard to hire and tenure of employment, thereby discouraging membership in the union and interferring with, restraining and coercing its employees in the exercise of the rights guaranteed in section 7 of the Act is not supported by the evidence.

14. That the finding contained in paragraph IV that the alleged activities of Respondent as set forth in section 3 have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead and have led to labor disputes, burdening and obstruct-

ing commerce and the free flow of commerce, is not supported by the evidence.

15. The findings contained in paragraph V that,
(a) Respondent has engaged in and is engaging in unfair labor practices;

(b) That Respondent has refused to bargain collectively with the union as the exclusive representative of its employees in an appropriate unit;

(c) That alleged unfair labor practices of respondent caused and prolonged the strike which began on July 24, 1941;

(d) That Baliber, Berteaux, Cimarusti, Costella, Quinn and Sardo went on strike on that date because of unfair labor practices of respondent;

(e) That said employees asked for reinstatement on or about September 10 and 13, 1941, and failed to receive it, are not supported by the evidence;

16. Respondent objects to paragraphs 2, 3, 4, 5, 6, 7 and 8 of the Conclusions of Law upon the ground that the same are not supported by the evidence or the Findings of Fact, and that there is no warrant or basis whatsoever for any of the findings of the Examiner or the Conclusions of Law that there has been a violation of the National Labor Relations Act or any part thereof.

17. That the findings of restraint, interference and coercion in III, subdivision A, based upon the alleged derogatory and anti-union statements of Bothman and/or Schwartz are unsupported by the evidence and are in violation of the right of free speech and expression guaranteed by the first amendment to the Federal Constitution.

18. That the Conclusions of Law that respondent has been guilty of unfair labor practices and

of interfering with, restraining and coercing its employees in the exercise of the rights guaranteed by the act, insofar as the same are based upon the alleged derogatory and anti-union statements of Bothman and/or Schwartz, are unsupported by the evidence or the findings of fact and are violative of the right of free speech and expression guaranteed by the first amendment to the Federal Constitution.

19. Respondent further objects and excepts to the recommendations of the Trial Examiner as set forth in the intermediate report upon the ground and for the reason that the evidence does not establish that respondent has been guilty of any unfair labor practices or of a violation of the National Labor Relations Act or any part thereof.

Wherefore, respondent prays that the said intermediate report be rejected and that approval thereof be denied by the Board, and that the within proceedings be dismissed.

SAM WOLF AND

LEO SHAPIRO

By LEO SHAPIRO

Attorneys for Respondent,

Lettie Lee, Inc.

[Title of Board and Cause.]

Mr. Maurice J. Nicoson and
Mr. Charles M. Ryan,
For the Board.

Mr. Leo Shapiro and Mr. Sam Wolf,
Of Los Angeles, Calif.,
For the Respondent.

Mr. David Sokol,
Of Los Angeles, Calif.,
For the Union.

Miss Grace McEldowney,
Of Counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon an amended charge duly filed by International Ladies' Garment Workers' Union, Cutters Local No. 84, A.F.L., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaint dated December 5, 1941, against Lettie Lee, Inc., Los Angeles, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint,

accompanied by notice of hearing, were duly served upon the respondent and the Union.

With reference to the unfair labor practices, the complaint alleged, in substance: (1) that in or about September 1938, and thereafter, the respondent, by attempting to ascertain whether persons seeking employment with it were affiliated with the Union, by making statements to its employees derogatory of the Union, by threatening to terminate its business rather than sign a collective bargaining agreement with the Union, by raising the wages of its cutters for the purpose of discouraging them from affiliating with the Union, and by soliciting various of its striking employees individually to return to work, interfered with, restrained, and coerced its employees in the exercise of the right to engage in concerted activities for the purpose of bargaining collectively with the respondent or for other mutual aid or protection; (2) that on or about July 22, 1941, and at all times thereafter, the respondent refused to bargain collectively in good faith with the Union, although it had been duly designated as the representative of the respondent's employees within an appropriate unit; (3) that the respondent's unfair labor practices caused and prolonged a strike among its employees which commenced on or about July 24, 1941, and continued up to and including the date of the hearing; and (4) that on or about September 10 and September 14, 1941, the respondent refused to reinstate to their former or substantially equivalent positions six striking em-

ployees named in the complaint,¹ for the reason that they had designated the Union as their representative for the purposes of collective bargaining and had otherwise engaged in concerted activities for the purpose of bargaining collectively with the respondent or for other mutual aid or protection. On January 20, 1942, the respondent filed an answer admitting certain allegations of the complaint with respect to its business, but denying that it had engaged in any unfair labor practices.

Pursuant to notice,² a hearing was held at Los Angeles, California, on January 19, 20, 26, 27, 28, and 29, 1942 before Gustaf B. Erickson the Trial Examiner duly designated by the Chief Trial Examiner. The Board the respondent, and the Union were represented at and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. At the close of the Board's case, the respondent moved to dismiss the complaint. The motion was denied by the Trial Examiner. At the close of the

¹The employees named in the complaint were as follows: Louis Baliber, Nolan Berteaux, Vito N. Cimarusti, Angelo P. Costella, Donald P. Quinn, and Joe Sardo.

²At the opening of the hearing, counsel for the respondent raised a question as to the adequacy of the notice, and requested a continuance to enable him to prepare his case. The Trial Examiner granted the request and the hearing was accordingly adjourned from January 20 to January 26, 1942.

hearing, the Trial Examiner granted, without objection, a motion by counsel for the Board to conform the pleadings to the proof. The respondent then renewed its motion to dismiss the complaint. Ruling on this motion was deferred by the Trial Examiner, who thereafter denied the motion in his Intermediate Report. The respondent also moved to strike from the record all evidence of conversations between any of the witnesses and Louis Swartz, on the ground that Swartz was not authorized to make any statements or perform any acts on behalf of the respondent.³ The motion was denied by the Trial Examiner. During the course of the hearing, the Trial Examiner made rulings on other motions and on the admissibility of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Trial Examiner afforded all parties an opportunity to present oral argument and to file briefs. All parties waived oral argument. On February 12 and 16, 1942, respectively, the Union and the respondent filed briefs with the Trial Examiner.

Thereafter, the Trial Examiner filed his Intermediate Report, dated March 21, 1942, copies of which were duly served upon the parties. He found that the respondent had engaged in and was engaging in unfair labor practices affecting com-

³As appears below, Swartz was the foreman of the respondent's cutting room.

merce, within the meaning of Section 8 (1), (3), and (5) and Section 2 (6) and (7) of the Act, and recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. On April 22, 1942, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. Neither the respondent nor the Union requested oral argument before the Board.

The Board has considered the exceptions and brief filed by the respondent and, insofar as the exceptions are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondent

Lettie Lee, Inc., is a California corporation engaged in the manufacture of dresses. Its office and place of business is in Los Angeles, California. In the conduct and operation of its business it uses rayons, threads, buttons, buckles, and zippers. During the year ending December 31, 1940, it purchased such materials in the amount of \$151,000, of which \$136,000 represented purchases from sources outside the State of California.⁴ During

⁴Although a stipulation on commerce, entered into by the respondent and counsel for the Board, gives the above figures for purchases "during the calendar year ending March 31, 1940," this is ob-

the same period it made sales of its products amounting to \$397,000. Of that amount, \$250,000 represented sales to purchasers located outside the State of California.

The respondent concedes that it is engaged in commerce, within the meaning of the Act.

II. The organization involved

International Ladies' Garment Workers' Union, Cutters Local No. 84, is a labor organization affiliated with the American Federation of Labor, admitting to membership cutters employed by the respondent.

III. The unfair labor practices

A. Sequence of events; interference, restraint, and coercion

In January 1940, Angelo Costella, one of the employees involved in the present proceeding, applied to the respondent for a job as cutter. Sam Bothman, the respondent's secretary-treasurer and general manager, asked him whether he was a union man. Costella replied that he was not, and was hired. Later in the same year, Vito Cimarusti also applied to Bothman for work and was asked

viously an error. The respondent, in a letter of September 11, 1941, to the Regional Office of the Board, introduced in evidence at the hearing, gave the same figures for the period from January 1 to December 31, 1940, which is the period used in both the letter and the stipulation in reference to sales. It would appear that, in both instances, the information covers the calendar year ending December 31, 1940.

whether he belonged to the Union. Cimarusti said that he did not, and that he knew nothing about it. Thereafter, in February 1941, he was hired. At the hearing, Bothman admitted having sometimes asked applicants for employment whether they were union members, giving as his reason for so doing that "most of [his] employees did not belong to a union, and sometimes a person would be uncomfortable, if they did."

On June 11, 1941, Bothman met with the respondent's male cutters⁵ in reponse to a request by them for an increase in wages. The meeting was held in the plant after working hours. According to the testimony of Cimarusti, a witness for the Board,⁶ Bothman first asked the cutters how many of them belonged to the Union or intended to join it. Receiving no reply, he proceeded to tell them that the union officials were "a bunch of shysters," who were not "out to help" the employees and who could do them no good. He warned them that the Union would "stuff this place full of cutters and keep you fellows from getting all the work that you should, and you

⁵The male cutters working in the plant at that time were Louis Swartz, Mortimer Litwin, Louis Baliber, Nolan Berteaux, Vito N. Cimarusto, Angelo P. Costella, Donald P. Quinn, and Joe Sardo. Swartz was the respondent's head cutter, in general charge of the cutting room. He had supervisory duties, and was regarded by his fellow employees as their foreman.

⁶Cimarusti's testimony was corroborated in all essential particulars by that of Quinn.

will have to split it up with the new fellows we will have to put on." He further advised them that he would have nothing to do with the Union, saying that he would "sooner close up this place than operate under a bunch of shysters," and related an experience that he had had in dealing with a union when the cutters had tried "to run the place" and as a result he had had to "clear out." He also spoke of an impending strike in the industry and said that he wanted to know the cutters' attitude toward it, stating that he felt safe in talking to them and that he did not think they would join a strike if it was called.⁷

In regard to their request for a raise, Bothman offered the cutters their choice of an increase in pay, which he said would necessitate the hiring of another cutter to avoid paying for overtime work, or continuing at the same rate with the usual amount of overtime. The latter, he said, would amount to more over the period of a year than would the raise in wages without overtime.

⁷At the hearing, Bothman denied that anything had been said at this meeting about the Union, and Swartz and Litwin testified that they had not heard or did not recall the above statements. Nevertheless, in view of the mutually corroborative testimony of Cimarusti and Quinn, and on the basis of the whole record, we find, as did the Trial Examiner, that, at the June 11 meeting, Bothman made, in substance, the statements attributed to him by Cimarusti and Quinn. At the second meeting of the same group, discussed below, Bothman admittedly asked the cutters how they felt about the Union.

After asking the cutters to decide and let him know which alternative they preferred, he left the meeting.

The cutters decided to stand by their request for a raise, and on June 13 again met with Bothman to give him their decision. Bothman told them that a 15-cent per hour increase would be effective immediately, but warned them that he did not want them to have any dealings with the Union. He also told them that the raise applied only to them and that they should say nothing about it to the rest of the employees.

During June and July 1941, the International Ladies' Garment Workers' Union, herein called the International, with which the Union is affiliated, made plans to organize the employees of the dress manufacturing plants in the Los Angeles area. As part of its program, a committee of three was appointed and given the power to call a strike in these plants on a date to be determined by the committee. It wrote to the companies involved, asking them to confer with the International regarding their employees. Early in July, it sent such a letter to the respondent, but the respondent neither answered nor acknowledged the letter.

In the meantime, Harry Scott, then organizer and representative of the Union, solicited the membership of the respondent's male cutters. On July 21, 1941, Baliber, Berteaux, Cimarusti, Costella, Quinn, and Sardo went to the office of the Union and signed membership application cards.

On the following day, July 22, Scott requested

David Sokol, the attorney for the Union, to arrange a conference with the respondent for the purpose of collective bargaining on behalf of the cutters. Sokol telephoned the office of the respondent and asked for Bothman. He did not talk to Bothman, but left his name and telephone number with the respondent's telephone operator. On the following day, July 23, Sokol again telephoned the respondent's office and asked for Bothman, but again he was unable to talk to Bothman. He asked the operator why Bothman had not returned his call, and requested her to give Bothman a message that Sokol represented the Union, that it desired to enter into negotiations with the respondent, and that, "if the Company did not recognize the Union, inasmuch as it represented the majority, there was a possibility of a strike because of the company's unfair labor practices."

That night the strike committee of the International met. It received a report from Scott that a majority of the respondent's cutters had signed membership applications, and was told of Sokol's failure to get in touch with Bothman. Acting upon this information, the committee included the respondent among the companies that were to be struck. At midnight on July 23, the committee advised Scott that it was calling an industry-wide strike in Los Angeles for 6 o'clock the next morning and that a picket line would be established about the plant of the respondent.

On the morning of July 24, the strike began. The male cutters and approximately 14 other em-

ployees of the respondent joined the strike. Later the same day, Bothman appeared at a nearby cafe at which the cutters had gathered. He told them that he was surprised that they had joined the strikers; that he thought they were a "bunch of fools"; that they should not be "chumps"; and that "any of you [who] want to come back to work, come back with me right now."

During that day and on the following day, Sokol made several attempts to talk to Bothman on the telephone. He reiterated to the respondent's telephone operator that he desired Bothman to speak to him or to some other representative of the Union with respect to "entering into a bargaining relationship," and stated that Bothman's failure to respond to his calls "aggravated the situation." Bothman was told of Sokol's calls, but failed to respond.

On July 26, Bothman telephoned Cimarusti and, according to Cimarusti's testimony, expressed surprise that the cutters had gone on strike, because he had treated them "all right." He told Cimarusti that "those shysters up there, they can't do anything for you. They are just looking out for themselves. * * * The rest of the boys are working * * * some of them are coming in Monday to work for me. * * * I want you to come in." He also said, according to Cimarusti, that "if he had to sign up with the Union that night, he would close up, Lettie Lee [the respondent's president] would go to Texas and he would open another shop, or do

something.”⁸ About a month later, Bothman met Cimarusti in the lobby of the building which houses the respondent’s plant. On this occasion Bothman said to Cimarusti, “Don’t be a damned fool. Go on up and go to work.”

On September 9, 1941, Sokol wrote to the respondent requesting the reinstatement of Costella, Cimarusti, Berteaux, Baliber, Sardo, and Quinn, and at the same time requesting that the respondent bargain with the Union. On September 13, he again wrote to the respondent repeating his request for the reinstatement of all the strikers. Bothman made no reply to these requests.

In the latter part of September or in October, Bothman met Quinn, Berteaux, and Cimarusti on the picket line. Bothman told them that he would have nothing to do with “those shysters up there,” but wanted the three of them to return to work. They said that he would have to talk to the Union about that, and also asked whether he wanted Baliber and Sardo back. Bothman replied, “No, I am talking to you as individuals. I am not going to talk to you in a group.” Bothman then called a friend of his who was standing close by and asked him to be a witness to what was being said. Bothman continued to urge Quinn, Berteaux, and Cimarusti, as individuals, to return to work. They

⁸Bothman admitted having telephoned Cimarusti to ask him to return to work, but said that he did not recall the other statements attributed to him by Cimarusti. We credit Cimarusti’s testimony, as did the Trial Examiner.

again asked about Costella, Sardo, and Baliber, but Bothman told them that Costella and Baliber were trouble makers and "stinkers," that Sardo was an ex-convict, and that he would not take any of them back to work in the plant.

On or about October 8, Quinn went to the home of Foreman Swartz in response to Swartz's invitation. Swartz told Quinn that a full crew was working in the cutting room, but that he wanted Quinn to return to work. When Quinn replied that if he came back it would have to be with the rest of the striking cutters, Swartz replied:

That will never happen. You fellows haven't got a chance. I better let you know now. You just haven't got a darned chance. The Union is going to drop you in a couple weeks. I have the inside information, and I know that the Union is going to drop you in a couple weeks, and you won't be able to get a job anywhere in town. You will be blacklisted.

In the same conversation, Swartz told Quinn that Bothman was trying to get a contract with the Government to make uniforms, and said, "You know, the Union isn't going to strike against the Government." Swartz also repeated that Bothman "would never sign a contract, he would close the shop first." Swartz then advised Quinn to talk to Cimarusti and Berteaux about going back to work.

A day or two after his conversation with Quinn, Swartz telephoned Cimarusti and asked him

whether Quinn had talked to him. Cimarusti replied in the affirmative, and said that the cutters were not going to return to work except as a group. Swartz told Cimarusti that he was a fool, because the Union was not going to do anything for him; that several union shops and the respondent had joined with the "M & M";⁹ and that the "M & M" would protect the workers. He told Cimarusti that the respondent would close up rather than sign a contract with the Union.

From the facts set forth above, we find that the respondent sought to ascertain whether persons seeking employment with it were interested in or affiliated with the Union or any other labor organization; that on June 11, 1941, through Bothman, and thereafter, through Bothman and Swartz, it made statements to various of its employees derogatory of the Union and union officials; that it threatened to terminate its business rather than sign a collective bargaining agreement with the Union; and that it solicited various of its employees individually to return to work after they had gone out on strike. We further find, as did the Trial Examiner, that by this course of conduct the respondent interfered with, restrained, and coerced

⁹The "M & M" refers to the Merchants and Manufacturers Association of Los Angeles. See Matter of Sun-Tent Luebbert Co., et al. and Textile Workers Union of America, Local No. 99, C.I.O., and Independent Canvas Workers Union, Inc., party to the contract, 37 N.L.R.B. 50.

its employees in the exercise of the rights guaranteed in Section 7 of the Act.¹⁰

B. The refusal to bargain collectively

1. The appropriate unit

The complaint alleges, and the Trial Examiner has found, that all persons employed by the respondent as full-time cutters¹¹ constitute a unit appropriate for the purposes of collective bargaining. The respondent, on the other hand, contends in the alternative that the bargaining unit should consist of all production employees or of all persons employed in the cutting room; or that, if the Board finds a cutters' unit appropriate, all employees classified as cutters on the respondent's pay roll should be included.

¹⁰In its brief the respondent contends that the Trial Examiner's finding of restraint, interference, and coercion, based upon the alleged derogatory and anti-union statements of Bothman and Swartz, was in violation of the right of free speech guaranteed by the First Amendment to the Constitution. The Supreme Court has held, however, that the Board may consider what an employer has said as well as what he has done in determining whether he has interfered with, restrained, and coerced his employees. See *N.L.R.B. v. Virginia Electric and Power Company*, 314 U.S. 469. In the present case, the anti-union statements of Bothman and Swartz clearly constituted part of a course of conduct aimed at discouraging union activity and therefore within the prohibitions of the Act.

¹¹The employees designated in the complaint and Intermediate Report by the term "full time cutters" are the male employees listed on the respondent's pay roll as cutters.

In addition to cutters, the respondent's production employees, as listed on its pay roll, include designers, assorters, operators, drapers, pressers, finishers, time workers, and sample makers.¹² In the process of manufacture, a dress passes through the hands of employees in each of these classifications; the operations are continuous, and all the employees work in the same building and under the same general working conditions. All production employees might, therefore, constitute an appropriate bargaining unit. At the present time, however, the Union is the only labor organization which has requested recognition as the representative of any of the respondent's employees, and it neither admits to membership nor is seeking to represent any employees except the cutters. To find a unit of all production employees appropriate would, therefore, deprive the cutters of the benefits of collective bargaining until the remaining production employees are organized. Under similar circumstances, we have previously found a cutters' unit to be appropriate.¹³ The question remains

¹²During the week ending July 25, 1941, the respondent employed 110 production employees, 10 of whom were listed as cutters.

¹³See Matter of Crescent Dress Co. and Cutters Local 11, I.L.G.W.U., A. F. of L., 29 N.L.R.B. 351. Cf. Matter of Justin McCarty, Inc. and International Ladies' Garment Workers' Union, Local No. 387, 36 N.L.R.B. 800; Matter of Morten-Davis Company, doing business under the trade name of Donovan Manufacturing Company and International Ladies' Garment Workers' Union No. 387, 36 N.L.R.B. 804; and Matter of Kohen-Ligon-Folz,

whether, in this case, the appropriate unit should consist of the full-time cutters only, as the Trial Examiner has found, or should include some or all of the other employees in the cutting room.

The cutting room in the respondent's plant is an area partially enclosed by a partition, within which are located the cutting tables, tools, and instruments, and shelves upon which materials are kept. The employees who work in this area are assorters or bundlers, a stock girl, and all those classified by the respondent as cutters.

The employees listed on the respondent's pay roll as cutters include both male and female employees, all of whom perform cutting operations on the dresses manufactured by the respondent, use the same tools, and have the same foreman. The union contends, however, that only the men in this group are in fact cutters, whereas the women are "slopers" or "trimmers" and, as such, are ineligible to mem-

Inc. and International Ladies' Garment Workers' Union, Local No. 387, 36 N.L.R.B. 808, in which we found a cutters' unit inappropriate. In these cases organization had been begun on an industrial basis before the formation of the cutters' local, and all other organized plants in the same locality had been organized on an industrial basis. While the Union in the present case is a member of a Joint Board of four locals of the International, by which it has been represented in bargaining contracts with the Dress Association of Los Angeles, it has at all times maintained an autonomous position in the International organization, electing its own representatives and, in some instances, entering into separate contracts for cutters in plants where only cutters have been organized.

bership in the Union and should not be included in a cutters' unit.¹⁴

The record shows that, prior to the strike, the men customarily, and the women occasionally, cut whole garments, but that the women spent the greater part of their time in the operations commonly known in the trade as sloping and trimming, which involve the cutting of trimmings, linings, padding, and parts of garments for which material is first pleated or otherwise specially prepared. Although the evidence regarding the relative difficulty of the work performed by the men and women is conflicting, the women admittedly received a much lower rate of pay. Nevertheless, the record shows, and the Trial Examiner has found, that Katherine Lembke, Dorothy Richards, and Eunice Usher, the only three women in this classification prior to the strike, were in fact qualified cutters, and the Union has not excepted to this finding. Since the strike, the men and women have been doing the same kind of work. Under the circumstances, we are of the opinion and we find that the slopers and trimmers should be included in the unit along with the cutters.

(14) Scott, a witness for the Board, testified that women cutters are eligible for membership in the Union, but that slopers are not admitted "because of their lack of ability to do anything other than that [sloping]," and that trimmers are excluded because they "are not classified as properly qualified to be cutters." As appears below, however, the women employed by the respondent for such work are in fact qualified cutters.

The only other employees who work in the cutting room are the assorters or bundlers, who assemble the pieces of the garments after they are cut, and a stock girl, who gets materials from the shelves as they are required. The duties of these employees do not involve cutting; they are not eligible for membership in the Union; and there is no evidence that they desire to be represented by the Union or to be included in a bargaining unit with the cutters. We therefore find that they are not a part of the appropriate unit.

The cutters, slopers, and trimmers who were actually working at the respondent's plant on July 22, 1941, were Swartz, Baliber, Berteaux, Cimarusti, Costella, Litwin, Quinn, Sardo Richards and Usher. Of these Swartz was the only one in a supervisory capacity. Although the Trial Examiner has included Swartz in the cutters' unit which he found appropriate, and neither the respondent nor the Union has excepted to this finding, we find that, as a supervisory employee, he is not within the unit hereinafter found appropriate.

The respondent claims that Robert Thain and Katherine Lembke were also in its employ on July 22, 1941, and should be included in the unit. Thain is a brother of Lettie Lee, the president of the respondent. Prior to January, 1941, he was admittedly employed by the respondent as a cutter. In January, however, he left for an indefinite period of time on account of his health. At the time he left, he was told by Bothman that, if he returned, he could have his job back. His name was not car-

ried on the pay roll during July 1941, nor was it included in the list of employees in the cutting department, furnished to the Regional Office of the Board by the respondent on September 11, 1941, and introduced in evidence at the hearing. He did not return to work until December, 1941. Under these circumstances we find, as did the Trial Examiner, that Thain was not an employee of the respondent on July 22, 1941. Lembke, a sloper or trimmer, had left work in May 1941 to take another position for the summer, as she had done on a previous occasion. The record shows that for this purpose she was given leave of absence for a definite period. She returned to work during October 1941. We find that she was an employee of the respondent on July 22, 1941.

We find that all cutters, slopers, and trimmers employed by the respondent, excluding supervisory employees, at all times material herein constituted, and that they now constitute, a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment, and that said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act. We further find that on July 22, 1941, the employees within the appropriate unit were Baliber, Berteaux, Cimarusti, Costella, Litwin, Quinn, Sardo, Lembke, Richards and Usher.

2. Representation by the Union of a majority in the appropriate unit

Of the 10 employees within the appropriate unit, 6 had signed applications for membership in the Union and requested it to bargain for them on July 21, 1941. Litwin thereafter personally informed Sokol on July 24, 1941, that he desired the Union to represent him.

We find that on July 22, 1941, and at all times thereafter, the Union was the duly designated representative of a majority of the respondent's employees in the unit hereinbefore found appropriate, and that, by virtue of Section 9 (a) of the Act, it was the exclusive representative of all the employees in said unit for the purposes of collective bargaining with the respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

As stated above, the respondent, on July 22, 23, 24, and 25, 1941, was requested to confer with Sokol or some other representative of the Union with respect to bargaining for the cutters. The respondent made no reply to these requests. Thereafter the respondent, through Bothman and Swartz, solicited some of its striking employees, as individuals, to return to work and advised them that it would have nothing to do with the Union .

Bothman testified at the hearing, and the respondent claims in its brief, that its failure to deal

with the Union was due to its belief that a cutters' unit was not appropriate.¹⁵ On the basis of the entire record, however, we do not believe that a bona fide doubt as to the appropriateness of the unit claimed by the Union was the real reason for the respondent's refusal to bargain. Bothman had previously expressed to the cutters his antipathy to the Union and his unwillingness to deal with it. We therefore infer and find that the real reason for his failure to respond to Sokol's calls was the respondent's desire to avoid bargaining collectively with the Union as the representative of any of its employees, and that its subsequent questioning of the unit was merely an afterthought, as the Trial Examiner has found.¹⁶

We find that on July 22, 1941, and at all times thereafter the respondent, by failing to respond to

(15) Although the unit hereinbefore found appropriate differs in some respects from the unit for which the Union has been contending throughout this proceeding, we find that fact immaterial under the circumstances. The respondent, by failing to agree to a conference with the Union, precluded any discussion of the unit and in effect refused to bargain with the Union for employees in any unit.

(16) Cf. *N.L.R.B. v. Biles-Coleman Lumber Co.*, 98 F. (2d) 18, in which the Court said: "Respondent made no objection to the contract on the basis of the propriety of the unit for which it was being presented. The Board was entitled to draw the inference that respondent's refusal to negotiate with the Union was motivated, not by doubt as to the appropriate unit, but by a rejection of the collective bargaining principle."

the Union's requests for a bargaining conference, and by its solicitation of strikers, as individuals, to return to work, refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and that it thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

C. The discriminatory refusals to reinstate

As stated above, on July 23, 1941, after receiving Scott's report that a majority of the respondent's cutters had joined the Union and that the respondent had failed to respond to Sokol's requests for a bargaining conference, the International included the respondent's plant among those in which it called a strike. Having found that the respondent's failure to reply to the Union's requests constituted a refusal to bargain, within the meaning of Section 8 (5) of the Act, we further find, as did the Trial Examiner, that the strike in the respondent's plant, which commenced on July 24, 1941, was caused by the unfair labor practices of the respondent. During the strike, the respondent persisted in its refusal to deal with the Union, and on repeated occasions sought to persuade its employees to abandon the strike and attempted to split the ranks of the strikers by stating that it would take back some, but not all, of them. These acts of the respondent constituted additional unfair labor practices which, as the Trial Examiner has found, served to prolong the strike.

On September 9 and 13, 1941, Sokol notified the respondent, by letter, that the striking employees were ready and willing to return to work and requested their reinstatement. Since the strike had been caused and prolonged by the respondent's unfair labor practices, these employees were entitled, in the absence of some valid reason for discharge, to reinstatement, upon application, to their former or substantially equivalent positions, even though the respondent had hired new employees during the strike.¹⁷ Nevertheless, none of them has been reinstated.

In its answer, the respondent alleged that "it has at all times been willing that said employees return to work, and that it is now willing that said employees return to their work . . . that it has requested the said employees to return to their work, but that said employees have refused to do so." At

(17) *Black Diamond Steamship Corporation v. N.L.R.B.*, 94 F. (2d) 875 (C.C.A. 2), cert. den. 304 U.S. 579; *Matter of McKaig-Hatch, Inc. and Amalgamated Associated of Iron, Steel, and Tin Workers of North America, Local No. 1139*, 10 N.L.R.B. 33; *N.L.R.B. v. Remington Rand Inc.*, 94 F. (2d) 862 (C.C.A. 2), cert. den. 304 U.S. 576; *Stewart Die Casting Corporation v. N.L.R.B.*, 114 F. (2d) 849 (C.C.A. 7); *Matter of Rapid Roller Co., a corporation and Local 120, United Rubber Workers of America, Affiliated with the C.I.O.*, 33 N.L.R.B. 557, enf'd but remanded on another issue in 126 F. (2d) 452 (C.C.A. 7); *Matter of Shenandoah-Dives Mining Company and Mine, Mill & Smelter Workers, etc.*, 35 N.L.R.B. 1153; *Matter of The L. Hardy Company and Steel Workers Organizing Committee (CIO)*, 44 N.L.R.B., No. 197.

the hearing and in its brief, the respondent contended that there was not sufficient work available for all its employees, and that, since Sardo was an ex-convict, the respondent was under no obligation to reinstate him. These contentions are obviously inconsistent with the allegation that the respondent was at all times ready and willing to have its striking employees return to work.

The only evidence in support of the respondent's contention that it was willing to reinstate the strikers is that on several occasions the respondent, through Bothman and Swartz, invited Berteaux, Cimarusti, and Quinn to return to work. Baliber, Costella, and Sardo have at no time been offered reinstatement. Moreover, the record shows that new employees, hired during the strike, were retained in the respondent's employ after the Union's offer to terminate the strike, and that other employees were hired thereafter. The respondent's contention that there was insufficient work available is therefore untenable, nor has it offered any other reason for failing to reinstate Baliber and Costella.¹⁸

Sardo, the respondent contends, is not entitled to reinstatement because he is an ex-convict, having admittedly been convicted of a felony in Wisconsin. The fact of his conviction came to the attention of Bothman shortly after the strike began.

(18) Cimarusti, Quinn, and Berteaux testified that Bothman had told them that he did not want to reemploy Baliber and Costella because they were trouble makers; the respondent did not offer any evidence in support of this contention.

Nevertheless, in its answer the respondent did not allege Sardo's conviction as a defense to the charge that he had been discriminated against. In view of this fact, and since Baliber and Costella were also refused reinstatement, although in their cases no similar excuse was available, we find, as did the Trial Examiner, that Sardo's criminal record was not in fact the reason for refusing him reinstatement, but that the respondent was unwilling to reinstate any of its striking employees unless they returned to work as individuals and not as a group represented by the Union, and was seeking to rid itself of some of the strikers completely.

We find, as did the Trial Examiner, that on or about September 10, and thereafter, the respondent, by refusing to reinstate its striking employees, Louis Baliber, Nolan Berteaux, Vito N. Cimarusti, Angelo P. Costella, Donald P. Quinn, and Joe Sardo, discriminated in regard to their hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes bur-

dening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take affirmative action designed to effectuate the policies of the Act.

We have found that, on and after July 22, 1941, the Union was the exclusive representative of the employees in the appropriate unit. Having further found that the respondent refused to bargain collectively with the Union as such representative, we shall order it, upon request, to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit with respect to rates of pay, wages, hours of employment, and other conditions of employment.

We have also found that the respondent's unfair labor practices caused and prolonged the strike which began on July 24, 1941, and that on or about September 10, 1941, and thereafter, the respondent discriminated against its striking employees, Louis Baliber, Nolan Berteaux, Vito N. Cimarusti, Angelo P. Costella, Donald P. Quinn, and Joe Sardo, by denying them reinstatement. In such case, we normally order the reinstatement with back pay of the employees discriminated against. In the present case, however, the respondent, after refusing these employees reinstatement as a group, offered reinstatement to Berteaux, Cimarusti, and Quinn individually. This they refused, thereby resuming the status of strikers. We shall accordingly modify

our usual order with respect to back pay insofar as they are concerned.

We shall therefore order the respondent: (1) to offer to Baliber, Costella, and Sardo immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, and (2) upon application, to offer to Berteaux, Cimarusti, and Quinn reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges.¹⁹ The reinstatement shall be effected in the following manner: All employees hired by the respondent as cutters, slopers, or trimmers after July 24, 1941, the date of the commencement of the strike, shall, if necessary to provide employment for those to be offered reinstatement, be dismissed. If, despite such reduction in force, there is not sufficient employment available for the employees to be offered reinstatement, all available positions shall be distributed among the remaining employees, including those to be offered reinstatement, without discrimination against any employee because of his union membership or activities, following such system of seniority or other practice as has heretofore been applied in the conduct of the respondent's business. Those em-

(19) Where an employer has discriminated against employees, reinstatement of the employees discriminated against is normally necessary to effectuate the purposes of the Act. Sardo's criminal record does not, in our opinion, warrant our withholding the normally applicable remedy of reinstatement.

ployees, if any, remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list and offered employment in their former or substantially equivalent positions as such employment becomes available and before other persons are hired for such work, in the order determined by such system of seniority or other practice as has heretofore been followed by the respondent.

We shall also order the respondent to make whole Baliber, Costella, and Sardo for any loss of pay they may have suffered by reason of the respondent's refusal to reinstate them, by payment to each of them of a sum of money equal to that which he normally would have earned as wages from September 10, 1941, to the date of the respondent's offer of reinstatement or placement upon the preferential list hereinabove described, less his net earnings²⁰ during said period.

Berteaux, Cimarusti, and Quinn will also be or-

(20) By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U.S. 7.

dered made whole by the respondent for any loss of pay they may have suffered or may hereafter suffer because of the respondent's refusal to reinstate them. However, because of their refusal subsequent to September 10, 1941, to accept the respondent's offer of reinstatement, we shall exclude the period from the date of this refusal to the date on which they thereafter applied or hereafter apply for reinstatement in computing the amount of back pay due them. We shall order the respondent to pay each of them a sum of money equal to the amount which he would normally have earned as wages during the period from September 10, 1941, to the date on which he refused the respondent's offer of reinstatement and during the period from five (5) days after the date on which he has since applied or hereafter applies for reinstatement to the date on which the respondent offers him reinstatement or places him on the preferential list above described, less his net earnings during such periods.²¹

Even if we were to assume that the respondent's denial of reinstatement to the striking employees was not discriminatory, we would nevertheless under the circumstances award them reinstatement and back pay in the manner set forth above. Assuming that the respondent denied them reinstatement because their jobs were occupied by strikebreakers, and for no other reason, and assuming that a denial of reinstatement on such ground alone was not a violation of Section 8 (3) of the Act, nevertheless

(21) See footnote 20, *supra*.

the entire situation was brought about by the unfair labor practices of the respondent in interfering with, restraining, and coercing the employees in the exercise of the rights guaranteed in Section 7 of the Act and in refusing to bargain in good faith with the Union. In this situation the ordinary right of an employer to select his employees is qualified as a result of the unfair labor practices causing the strike, and not only are the striking employees entitled to reinstatement upon application, but also any refusal by the employer of their request for reinstatement subjects him to liability for loss of wages sustained by virtue of the refusal.²²

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All cutters, slopers, and trimmers employed by the respondent, excluding supervisory employees, at all times material herein constituted, and they now constitute, a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

(22) See Matter of The L. Hardy Company and Steel Workers Organizing Committee (CIO), 44 N.L.R.B., No. 197, and cases therein cited.

3. International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, was at all times material herein, and it now is, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, as the exclusive representative of the employees in the above-stated unit, the respondent, Lettie Lee, Inc., has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

5. By discriminating with regard to the hire and tenure of employment of Louis Baliber, Nolan Berteaux, Vito N. Cimarusti, Angelo P. Costella, Donald P. Quinn, and Joe Sardo, and thereby discouraging membership in International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are un-

fair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Lettie Lee, Inc., Los Angeles, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Ladies' Garment Workers' Union Cutters Local No. 84, affiliated with the American Federation of Labor, as the exclusive representative of all its cutters, slopers, and trimmers, excluding supervisory employees;

(b) Discouraging membership in International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of

collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, as the exclusive representative of all its cutters, slopers, and trimmers, excluding supervisory employees;

(b) Offer to Louis Baliber, Angelo P. Costella, and Joe Sardo immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner set forth in the section entitled "The remedy" above, and place those of them for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in such manner, offer them employment as it becomes available;

(c) Upon application, offer to Nolan Berteaux, Vito N. Cimarusti, and Donald P. Quinn immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner set forth in the section entitled "The remedy" above, and place those of them for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in such manner, offer them employment as it becomes available;

(d) Make whole Louis Baliber, Angelo P. Costella, and Joe Sardo for any loss of pay they may have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from September 10, 1941, to the date of the respondent's offer of reinstatement or placement upon a preferential list, less his net earnings during such period;

(e) Make whole Nolan Berteaux, Vito N. Cimarusti, and Donald P. Quinn for any loss of pay they may have suffered or may hereafter suffer because of the respondent's refusal to reinstate them, by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from September 10, 1941, to the date on which he refused the respondent's offer of reinstatement and during the period from five (5) days after the date on which he has since applied or hereafter applies for reinstatement to the date on which the respondent offers him reinstatement or places him upon a preferential list, less his net earnings during such periods;

(f) Post immediately in conspicuous places throughout its plant in Los Angeles, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; (2) that it will take the af-

firmative action set forth in paragraphs 2 (a), (b), (c), (d), and (e) of this Order; and (3) that the respondent's employees are free to become or remain members of International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership or activity in that organization;

(g) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 9 day of November, 1942.

[Seal]

HARRY A. MILLIS,
Chairman.

WM. M. LEISERSON,
Member.

GERARD D. REILLY,
Member.

National Labor Relations Board.

[Title of Cause.]

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Jack McCaleb being first duly sworn, an oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board

in Washington, D. C.; that on the 9th day of November 1942, I mailed postpaid, bearing government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

69429

International Ladies' Garment Workers'
Union, Cutters Local No. 84, A. F. of L.
215 East Eighth Street
Los Angeles, California

69430

Mr. David Sokol
707 South Hill Street
Los Angeles, California

69431

Lettie Lee, Inc.
719 South Los Angeles St.,
Los Angeles, California

69432

Messrs. Leo Shapiro and Sam Wolf
650 South Grand Avenue
Los Angeles, California
(Return Receipts attached.)

JACK McCALEB

Subscribed and sworn to before me this 9th day
of November 1942.

[Seal] KATHRYN B. HARRELL
Notary Public, D. C.

My commission expires March 1, 1947.

In the United State Circuit Court of Appeals
for the Ninth Circuit

No. 10382

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LETTIE LEE, INC.

Respondent.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Lettie Lee, Inc., Los Angeles, California, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Lettie Lee, Inc. and International Ladies' Garment Workers' Union, Cutters Local No. 84, A.F.L., Case No. C-2142."

In support of this petition, the Board respectfully shows:

(1) Respondent is a California corporation, engaged in business in the State of California, within

this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, complaint and notice of hearing, respondent's answer to complaint, order postponing hearing, hearing for the purpose of taking testimony and receiving other evidence, Intermediate Report, respondent's exceptions thereto, and order transferring case to the Board, the Board, on November 9, 1942, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent, and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Lettie Lee, Inc., Los Angeles, California, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the

American Federation of Labor, as the exclusive representative of all its cutters, slopers, and trimmers, excluding supervisory employees;

(b) Discouraging membership in International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, or in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, as the exclusive representative of all its cutters, slopers, and trimmers, excluding supervisory employees;

(b) Offer to Louis Baliber, Angelo P. Costella, and Joe Sardo immediate and full rein-

statement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner set forth in the Section entitled "The remedy" above, and place those of them for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in such manner, offer them employment as it becomes available;

(c) Upon application, offer to Nolan Berteaux, Vito N. Cimarusti, and Donald P. Quinn' immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, in the manner set forth in the section entitled "The remedy" above, and place those of them for whom employment is not immediately available upon a preferential list in the manner set forth in said section, and thereafter, in such manner, offer them employment as it becomes available;

(d) Make whole Louis Baliber, Angela P. Costella, and Joe Sardo for any loss of pay they may have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from September 10, 1941, to the date of the respondent's offer of reinstatement or placement upon a preferential list, less his net earnings during such period;

(e) Make whole Nolan Berteaux, Vito N.

Cimarusti, and Donald P. Quinn for any loss of pay they may have suffered or may hereafter suffer because of the respondent's refusal to reinstate them, by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from September 10, 1941, to the date on which he refused the respondent's offer of reinstatement and during the period from five (5) days after the date on which he has since applied or hereafter applies for reinstatement to the date on which the respondent offers him reinstatement or places him upon a preferential list, less his net earnings during such periods;

(f) Post immediately in conspicuous places throughout its plant in Los Angeles, California, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), and (c) of this Order; (2) that it will take the affirmative action set forth in paragraphs 2 (a), (b), (c), (d), and (e) of this Order; and (3) that the respondent's employees are free to become or remain members of International Ladies' Garment Workers' Union, Cutters Local No. 84, affiliated with the American Federation of Labor, and that the respondent will not discriminate against any

employee because of membership or activity in that organization ;

(g) Notify the Regional Director for the Twenty-first Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On November 9, 1942, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Leo Shapiro and Sam Wolf, respondent's attorneys in Los Angeles, California.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript, and the order made thereupon set forth in paragraphs (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent, and its offi-

cers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD

By ERNEST A. GROSS

Associate General Counsel

Dated at Washington, D. C., this 5th day of March 1943.

District of Columbia, ss:

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

ERNEST A. GROSS

Associate General Counsel

Subscribed and sworn to before me this 5th day of March 1943.

[Seal]

JOSEPH W. KULKIS

Notary Public, District of
Columbia.

My Commission Expires April 15, 1947.

[Endorsed]: Filed Mar. 10, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF RESPONDENT, LETTIE LEE,
INC., TO PETITION FOR ENFORCEMENT
OF ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Lettie Lee, Inc., respondent in the above entitled proceedings, for its answer to the petition of the National Labor Relations Board presented to this Honorable Court for the enforcement of a certain order of the National Labor Relations Board, hereinafter referred to as the "Board", respectfully alleges as follows:

I

Answering paragraph 1 of the petition, respondent admits the allegations thereof except that respondent denies that it has committed any unfair labor practices, whether as alleged in said paragraph or otherwise.

II

Answering the allegations of paragraph 2, respondent admits that on or about the 9th day of November, 1942, the Board made an order as quoted in said paragraph. Except as herein expressly admitted, respondent alleges that it does not have sufficient information or belief upon which to base an answer to the remaining allegations of said paragraph, and upon said ground and for lack of information or belief, denies generally and specifically

each and every of the remaining allegations of said paragraph.

III

Respondent admits the allegations contained in paragraph 3.

IV

Answering paragraph 4, respondent alleges that it does not have sufficient information or belief upon which to base an answer thereto, and upon said ground and for lack of information or belief respondent denies generally and specifically each and every of the allegations contained in said paragraph.

For a Further Answer to Said Petition, Respondent Alleges:

I

That the Board's findings of fact are not supported by substantial evidence.

II

That the Board's conclusions of law are not supported by the findings of fact.

III

That the Board's conclusions of law are not supported by the evidence.

IV

That the Board's conclusions of law are contrary to law.

V

That the Board's conclusions of law are contrary to law and the evidence.

VI

That the Board's order is not supported by the findings of fact.

VII

That the Board's order is not supported by the conclusions of law.

VIII

That the Board's order is not supported by the evidence.

IX

That the Board's order is contrary to law and the evidence.

X

That the Board's finding that respondent has engaged and/or is engaging in unfair labor practices within the meaning of Section 8 (1), (3) and (5) of the Act is not supported by the evidence and is contrary to law.

XI

That the Board's order is wholly void and improper and in excess of the jurisdiction of the Board.

Wherefore, respondent prays that this Honorable Court deny the petition of the National Labor Relations Board for the enforcement of its order. That the order of said Board be set aside in its entirety, or, if such prayer be denied, that this Court set aside said order of the Board in such part as the same is not supported by the evidence or its improper and, insofar as set aside, that the Court relieve respondent, its officers, agents, successors and assigns of any necessity to comply therewith.

Dated at Los Angeles, California, this 17th day of March, 1943.

SAM WOLF & LEO SHAPIRO

By LEO SHAPIRO

Attorneys for Respondent
Lettie Lee, Inc.

State of California

County of Los Angeles—ss.

Samuel Bothman, being by me first duly sworn, deposes and says: That he is the Secretary and Treasurer of Lettie Lee, Inc., respondent in the above entitled action; that he has read the foregoing Answer of Respondent, Lettie Lee, Inc., to Petition for Enforcement of Order of the National Labor Relations Board and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

SAMUEL BOTHMAN

Subscribed and sworn to before me this 18th day of March, 1943

[Seal] LEO SHAPIRO

Notary Public in and for said County and State.

AFFIDAVIT OF SERVICE BY MAIL—
1013a, C. C. P.

[Title of Circuit Court of Appeals and Cause.]

L. Ryan, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 650 South Grand Avenue, Los Angeles, California that on the 19th day of March, 1943, affiant served the within Answer of Respondent, Lettie Lee, Inc., to Petition for Enforcement of Order of the National Labor Relations Board on the Petitioner in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said Petitioner at the office address of said attorney, as follows: (Here quote from envelope name and address of addressee.)

“Ernest A. Gross, Esq.

Associate General Counsel

National Labor Relations Board

Washington, D. C.”;

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office Mail Chute at 650 S. Grand Ave., Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed, or there is a regu-

lar communication by mail between the place of mailing and the place so addressed.

[Seal] L. RYAN

Subscribed and sworn to before me this 19th day of March, 1943.

LEO SHAPIRO

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Mar. 22, 1943. Paul P. O'Brien, Clerk.

ORDER TO SHOW CAUSE

CCA #10382

United States of America, ss:

The President to the United States of America

To Lettie Lee, Inc., 719 South Los Angeles St., Los Angeles, California, and International Ladies' Garment Workers' Union, Cutters Local No. 84, A. F. of L., 215 East Eighth St., Los Angeles, Calif.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 10th day of March, 1943 a petition of the National Labor Relations Board for enforcement of its order entered on November 9, 1942 in a proceeding known upon the records of the said Board as "In the Mat-

ter of Lettie Lee, Inc., and International Ladies' Garment Workers' Union, Cutters Local No. 84, A.F.L., Case No. C-2142." and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Harlen Fiske Stone, Chief Justice of the United States, this 10th day of March in the year of our Lord one thousand, nine hundred and forty-three

[Seal] PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Marshal's Civil Docket No. 25419 Vol. 46 Page 81

RETURN ON SERVICE OF WRIT

United States of America,
Sou. District of Calif.—ss:

I hereby certify and return that I served the annexed copy of order to show cause and copy of Board's Petition to enforce on the therein-named International Ladies Garment Union, Cutters Lo-

cal No. 84 A. F. of L. by handing to and leaving a true and correct copy thereof with Mr. Jack Haas, Cutters Representative of Local 84 personally at Los Angeles in said District on the 15th day of March, 1943.

ROBERT E. CLARK,
U. S. Marshal.

By J. P. BROOKE
Deputy.

Marshal's Fees \$4.00
Mileage \$
Expenses \$.14
Total \$4.14

RETURN ON SERVICE OF WRIT

United States of America,
Sou. District of Calif.—ss:

I hereby certify and return that I served the annexed copy of order to show cause and copy of Board's petition to enforce on the therein-named Lettie Lee Inc. by handing to and leaving a true and correct copy thereof with Mr. Sam Bothman Secretary and Treasurer personally at Los Angeles in said District on the 15th day of March, 1943.

ROBERT E. CLARK,
U. S. Marshal.

By J. P. BROOKE
Deputy.

Before The National Labor Relations Board
Twenty-First Region
Case No. XXI-C-1807

In the Matter of:

LETTIE LEE, INC.

and

INTERNATIONAL LADIES' GARMENT
WORKERS' UNION, CUTTERS LOCAL No.
84, A.F.L.

TESTIMONY

Room 808, United States Post Office and
Court House Building,
Spring, Temple and Main Streets,
Los Angeles, California

Monday, January 19, 1942.

The above-entitled matter came on for hearing,
pursuant to notice, at 10:00 o'clock a. m.

Before:

Gustaf B. Erickson,
Trial Examiner.

Appearances:

Maurice J. Nicoson, and Charles M. Ryan,
Attorneys for the National Labor Relations
Board.

David Sokol,
707 South Hill Street, Los Angeles, Cali-
fornia, appearing on behalf of Interna-
tional Ladies' Garment Workers' Union,
Cutters Local No. 84, A.F.L.

Leo Shapiro,
650 South Grand Avenue, Los Angeles,
California, appearing for Lettie Lee, Inc.
[1*]

PROCEEDINGS

Trial Examiner Erickson: The proceedings will come to order.

This is a formal hearing before the National Labor Relations Board, in the matter of Lettie Lee, Inc. and International Ladies' Garment Workers' Union, Cutters Local No. 84, A. F. of L., Case No. XXI-C-1807.

The Trial Examiner appearing for the National Labor Relations Board is Gustaf B. Erickson. Counsel will please state all appearances for the record.

Mr. Nicoson: Maurice J. Nicoson appearing for the National Labor Relations Board.

* Page numbering appearing at top of page of original certified Transcript of Record.

Mr. Ryan: Charles M. Ryan also appearing for the Board.

Mr. Sokol: David Sokol appearing for the Union.

Trial Examiner Erickson: Who appears for the respondent?

Mr. Sokol: I may say with respect to that, that there seems to be no appearance, Mr. Examiner, and yet I know respondent has counsel, because I have a Wage and Hour case involving this concern, and they have counsel there; and also, Mr. Cobey, who was the Board's attorney first handling this matter granted—I don't mean granted, but, rather, that he was requested to grant a continuance by counsel for the company. His name is Sam Wolf, and that continuance was granted. The trial originally was set for December 15th, I believe. [3]

Mr. Nicoson: That is correct.

Mr. Sokol: 1941, and was continued at the request of counsel for the company.

Trial Examiner Erickson: Until today?

Mr. Sokol: Until today.

Trial Examiner Erickson: Hasn't the office of the Board here, that is, the Twenty-First Region, had any word from him since that time?

Mr. Nicoson: Your Honor, we have had no communication of any kind. The respondent has not even filed an answer in this proceeding. We have had no communication from the company since the request to postpone and the order postponing the hearing until today was issued.

Trial Examiner Erickson: It is now five min-

utes after ten. Would you have someone from the office, Mr. Nicoson, call his office to see whether or not he is on his way over here? It may be that he is delayed.

Mr. Nicoson: All right, sir.

Trial Examiner Erickson: We will be in recess until Mr. Nicoson has made the call.

(A short recess was taken.)

Trial Examiner Erickson: The proceeding will come to order. Do you represent the respondent, Mr. Shapiro?

Mr. Shapiro: I do, your Honor. [4]

Mr. Nicoson: Mr. Vito Cimarusti, please.

VITO CIMARUSTI,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Nicoson) Will you please state your name?

A. Vito Cimarusti, V-i-t-o C-i-m-a-r-u-s-t-i.

Q. Where do you live, Mr. Cimarusti?

A. 326 West 56th Street.

Q. Is that in the City of Los Angeles, California?

A. Los Angeles, California.

Q. Have you ever been employed by the Lettie Lee Company, Inc.?

A. Yes.

Q. In what capacity were you employed?

(Testimony of Vito Cimarusti.)

A. As a cutter.

Q. When did you first begin?

A. February the 1st, 1941.

Q. How long have you been a cutter?

A. For about seven or eight years.

Q. What are the duties of a cutter? [52]

A. Well, lay out the cloth, proceed to follow the patterns out, make a marker if necessary, and do all the general cutting towards the garment.

Q. Do you, pursuant to a pattern, cut out the various component parts of a garment?

A. Yes, sir.

Q. Do you cut more than one garment at a time?

A. It all depends on the order, yes.

Q. On some orders you are required to cut more than one garment? A. Yes.

Q. Some orders you only—— A. Cut one.

Q. ——cut one. What do you use in your cutting operation?

A. Well, there is one, two, three, sometimes four or five plies, and, why, we use a shears, and anything over that, we use a cutting knife.

Q. Are the shears operated manually?

A. Manually, yes, sir.

Q. That is like an ordinary pair of scissors?

A. Yes, sir.

Q. The cutting knife, how is that operated?

A. It is electrically powered, rotates, and you operate it and guide it and steady it by hand.

Q. It has a knife—— [53]

A. It has a power knife, operated by electricity,

(Testimony of Vito Cimarusti.)

which rotates, and you start it up and push it along, following the patterns.

Q. Push it along the lines of the pattern; is that correct? A. That's right.

Q. When you applied for work at the Lettie Lee Company, did you have a conversation with Mr. Bothman? A. Yes, I did.

Q. Will you state the substance of that conversation?

A. Well, that was—that happened about six or seven months prior to the date I went to work there. I walked into the office, and there was a girl at the desk, and I asked her if they needed any cutters, and she said, "No." And Mr. Bothman happened to be sitting at a desk nearby, and he happened to look up, and he recognized me, and he said, "I know you from some place."

I says, "Yes." He says, "Now, let me see where I know you from." And I told him where I had been working and where he knew me from, and he says, "Yes, he is a good boy. Take down his name."

And he asked me if I belonged to the Cutters Union at that time. I said, "No, I didn't. I didn't know anything about it."

Q. Then subsequently you did go to work there?

A. In February, yes. [54]

Q. In 1941? A. That's right.

Q. Now, directing your attention to on or about June 11, 1941, was there a meeting between the cutters and Mr. Bothman? A. Yes, there was.

(Testimony of Vito Cimarusti.)

Q. Where did that meeting take place?

A. It took place at 4:30 in the afternoon in the cutting room.

Q. Were you in attendance?

A. I was in attendance.

Q. How did you happen to attend that meeting?

A. Well, about 1:30 or 2:00 o'clock on that day,
Lou Swarz——

Q. Who is Lou Swarz?

A. He is the head cutter and general manager of the cutting department. He called me up and told me to get down there, there was going to be a meeting with Mr. Bothman that afternoon, and he wanted me to be in on it.

Q. Where were you? A. I was at home.

Q. Weren't you working that day?

A. I wasn't working that day.

Q. Subsequent to that telephone call, did you go to the plant? A. I did.

Q. And you attended this meeting? [55]

A. I attended this meeting.

Mr. Shapiro: Pardon me, counsel. What was that day?

Mr. Nicoson: June 11, 1941.

The Witness: I think that is right.

Q. (By Mr. Nicoson) What transpired at this meeting?

A. The 4:30 bell rang, and then Lou says, "Come in, Vito." And I walked into the cutting room, and the fellows and myself gathered around the tables, and about a minute later Mr. Bothman came

(Testimony of Vito Cimarusti.)

walking in. And we sat on the tables, or leaned against it. And he said, "Well," he says, "the first thing I want to know is how many of you belong to the union or intend joining the union."

Well, he didn't receive any answer. Then he went on to tell us about the bad points of the union.

Mr. Shapiro: Just a minute. I will move to strike that.

Mr. Nicoson: Yes. What did he say about the union?

Trial Examiner Erickson: All right. Strike the "bad points of the union" phrase.

Q. (By Mr. Nicoson) What did he say about it?

A. He said that they weren't out to help us, they couldn't do us any good, they were out to help themselves, they were a bunch of shysters.

Q. Who did he mean by "they"?

A. He evidently meant the officials up at the union.

Q. Well, did he mention the union in that connection? [56]

A. Well, he said, "That bunch up there" and we knew what he was talking about, because that is the only union we could have, the only one of its kind.

Q. What was it he said about it?

A. He said, "Oh, they are a bunch of shysters, they are not out to help you fellows, they are out to help themselves." And he says, "If you want a promotion," he says, "you are a cutter here, and they will keep you on as a cutter, and they will stuff this place full of cutters and keep you fellows from

(Testimony of Vito Cimarusti.)

getting all the work that you should, and you will have to split it up with the new fellows we will have to put on.”

He says, “I won’t have a thing to do with them. They are a bunch of shysters. I would sooner close up this place than operate under a bunch of shysters.”

Q. Did he say anything about “stuffing the shop”?

A. Yes. He said they would stuff the shop. By that he meant putting more cutters on than were necessary for the work on hand.

Then he went on to give us a proposition there. He says, “I understand you fellows want a raise.”

And we said, “Due to the living conditions going up, why, we do want a raise.”

He says, “Well, fellows, I have a proposition for you. Here it is,” he says, “I can give you the raise and have to hire another cutter, or I can keep the same crew on, and you [57] can work overtime in order to make up the difference.” And he says, “I think the overtime will overcome what raise you will get, will be more than—well, during the rest of the year, at the end of the year you will have made more money by working overtime than getting a raise.”

He says, “Will you fellows work right ahead, and think it over, and if you decide on what to do, let me know, and let me know next week.”

Q. Will you state whether or not he said anything about having dealings with unions in the past?

(Testimony of Vito Cimarusti.)

A. Well, he said he had union dealings in the past when he had the Bothman Brothers, and it didn't work out. He says it was just a turmoil all the time, the cutters were trying to run the place, and he had to eventually clear out due to that situation.

Q. State whether or not he said anything concerning the signing of a union contract.

A. Well, if he had to sign a union contract—

Q. Is that what he said?

A. That is what he said. If he had to sign a union contract, he would sooner close up the place, and Lettie Lee would go down to her ranch in Texas and operate the ranch, and he would open up a little store, or go to work for someone.

Q. Do you know who Lettie Lee is?

A. Lettie Lee I understand is the president of the firm. [58]

Q. Did anything else transpire at that time?

A. Not that I recall at the present.

Q. For the purpose of refreshing your recollection, state whether or not anything was said concerning a strike.

Mr. Shapiro: I am going to object to the form of the question, if the Court please, on the ground it is leading and suggestive, and an attempt by counsel to rehabilitate his witness. He has testified he doesn't remember what else happened.

Trial Examiner Erickson: He may answer the question.

(Testimony of Vito Cimarusti.)

The Witness: Well, he did say something about the strike. He says, "There is a strike going to come on, and I want to know how you boys stand." And he said that he felt safe in talking to us, and he felt us boys wouldn't have walked out if the strike was called, because, he says, "I think you boys are all right, and we will stick it out together."

Q. (By Mr. Nicoson) Is that all that transpired at that meeting? A. That's all.

Q. Prior to this time had you had any dealings with the union? A. No, I didnt.

Q. Had you had any dealings with a representative of the union?

A. Yes, a representative, about three or four weeks prior [59] to that, came into the restaurant where we ate and made approaches or talked with us and tried to point out the good points, but we just didn't heed them at that time.

Q. Did you work the next day?

A. Thursday, yes, after the meeting.

Q. The day following this meeting?

A. Yes.

Q. Did anything transpire in connection with this raise business on that day?

A. Well, as was customary, all of us cutters, we met in the Exchange Cafe. That is between 7th—between Los Angeles and Main Street on 7th Street, and the boys were there, and Nolan Berteaux and I came in——

Q. Who is Nolan Berteaux?

(Testimony of Vito Cimarusti.)

A. He is another one of the cutters up at Lettie Lee, and we walked in, and the boys had already been talking the thing over about the raise or the overtime, and the majority was there and they had decided that they wanted the raise, and they said, "How do you fellows feel?" So we said, "O. K., the raise it will be."

Q. You mean by the majority, the majority of whom? A. Of the cutters.

Q. Of Lettie Lee?

A. Yes. Well, Joe, Louis, Angelo, Don, they were there, and Nolan and I come walking in a little bit later. [60]

Q. Well, let's name the cutters by their first and last names.

A. The first is Joe Sardo, Lou Baliber—

Mr. Shapiro: How do you spell that, if you know?

The Witness: Baliber?

Mr. Shapiro: Yes.

The Witness: B-a-l-i-b-e-r. Angelo Castella and Don Quinn.

Q. (By Mr. Nicoson) Was Berteaux there?

A. Then Nolan and I come walking in and met up with the fellows, and they told us what had taken place.

Q. After that, did anything transpire concerning this matter?

A. Well, at lunch time I heard that they wanted to meet with Mr. Bothman, and Lou Swarz says, "Oh, meet with him Monday." And they wanted

(Testimony of Vito Cimarusti.)

to meet with him anyway. So they tried to get Lou to go in, and he came out and insisted on it being Monday.

Then that is all that transpired that day, but the following day, on Friday, I think Lou Baliber told me, or Angelo Castella, one or the other, said, "We are meeting with Mr. Bothman tonight, with the rest of us fellows. We will have it out tonight."

Q. Were you working that day?

A. Yes, on Friday.

Q. Did you meet with Mr. Bothman? [61]

A. At 4:30 that evening Mr. Bothman came into the cutting room.

Q. Who was present at that meeting?

A. Joe Sardo, Angelo Castella, Ton Quinn, Lou Baliber, Nolan Berteaux, Lou Swarz, Mort Litwin, and myself.

Q. Where were all of these people employed?

A. All at Lettie Lee.

Q. What do they do?

A. They are all cutters.

Trial Examiner Erickson: Is that the complete list of the cutters?

The Witness: Yes.

Trial Examiner Erickson: As of that time?

The Witness: There was one or two girls, but they weren't in the meeting. They are just trimmers.

Mr. Shapiro: That is not our position, of course.

Trial Examiner Erickson: I understand.

(Testimony of Vito Cimarusti.)

Mr. Shapiro: We contend that is only a portion of the cutters and of the cutting department.

The Witness: These girls were just the trimmers, the others. They weren't in on the meeting, no.

Q. (By Mr. Nicoson) Were they in on the first meetings? A. No, they weren't.

Q. Were any but those persons whom you have just mentioned in on the first meeting? [62]

A. Only the persons I have mentioned were at the first meeting.

Q. What transpired at this meeting on Friday?

A. Well, at 4:30 in the evening Mr. Bothman, we waited for him, he came in about two minutes after 4:30, about 4:37 or 38, and he says, "Well, fellows, I understand you want the raise." He says, "Well, it will start—it will start immediately. First of all, I don't want no dealings with the bunch down there." He says, "I understand how you fellows feel with me, and how you are going to play ball with me. You want to know how much it is going to be. Well, it is going to be 15 cents."

In other words, we were getting \$1.00, and it would be \$1.15 from then on.

"When does it begin? Immediately." And that was retroactive, back to Monday of that week.

Q. And did it begin? A. And it did.

Q. Was anything else said in that connection?

A. Well, he says, "Well, I feel safe in you boys going to play the ball square." And Lou Swarz

(Testimony of Vito Cimarusti.)

spoke up and says, "Well, I can vouch for these fellows."

He says, "Go ahead and pitch in, so we won't have to hire no other fellows. Let's work this thing out together." That's all he said. Then Swarz spoke up. [63]

Q. Will you please state whether or not anything was said as to whom this raise would apply?

A. He says just—he says, before he walked out of the cutting room, he said, "This applies just to you fellows, and keep your mouth shut. Don't say anything to the rest of them, because you know how they are, if they hear you have a raise, they will want a raise, and so on."

Q. And you did get the raise?

A. We did get the raise.

Q. Did you thereafter receive it?

A. Yes, sir. I have stubs here that would show that. Here is two days of the week that I worked (indicating), and the rest of them, up to the time we were out. Here is the last week prior to the raise. That was when I was laid off, before I went back to work.

Mr. Nicoson: Will you mark that for identification, please?

(Thereupon the document referred to was marked as Board's Exhibit 2, for identification.)

Q. (By Mr. Nicoson) I show you an instrument, which, for the purpose of identification, has been

(Testimony of Vito Cimarusti.)

marked Board's Exhibit 2, and ask you to examine it and state whether you know what it is?

A. This is a check stub that we have as a personal record. It comes on the end of our check, and we keep this, and the [64] rest we cash, and that eventually gets back.

Q. You detach that from your pay check?

A. That's right. That's for a full 40 hour week there.

Q. This is dated May 9, 1941. A. Yes.

Q. Is that the last pay day you had?

A. That was the last pay period I had before the raise.

Q. And that represents, does it, a full work week? A. That's right.

Mr. Nicoson: I offer this in evidence.

Mr. Shapiro: No objection.

Trial Examiner Erickson: It will be received.

(Thereupon the document heretofore marked for identification as Board's Exhibit 2, was received in evidence.)

Mr. Nicoson: Mark that, please.

(Thereupon the document referred to was marked as Board's Exhibit No. 3, for identification.)

Q. (By Mr. Nicoson) I now hand you an instrument which, for the purpose of identification, has been marked Board's Exhibit 3, and ask you to examine it and state, if you know, what it is.

A. It is another check stub, which shows that I

(Testimony of Vito Cimarusti.)

received pay for two days at work with the pay increase.

Q. Is the date indicated?

A. June 13, 1941. Yes. [65]

Q. Well, June 13th, is that the end of the pay period? A. That's right.

Q. That would be for the preceding week?

A. That's right.

Q. Was it within that week that you had this conversation with Mr. Bothman?

A. It was on Wednesday of that week.

Mr. Nicoson: I will offer this in evidence.

Mr. Shapiro: No objection.

Trial Examiner Erickson: It will be received.

(Thereupon the document heretofore marked as Board's Exhibit 3 for identification, was received in evidence.)

Mr. Nicoson: Mark this, please.

(Thereupon the document referred to was marked as Board's Exhibit 4, for identification.)

Q. (By Mr. Nicoson) I will hand you an instrument which, for the purpose of identification, has been marked Board's Exhibit 4, and I ask you to examine it and state, if you know, what it is.

A. This is a check stub, showing the full week's pay. That is the following week after we were granted the raise.

Q. That was likewise detached from your pay check? A. That's right.

(Testimony of Vito Cimarusti.)

Q. That you received from the Lettie Lee Company? A. Yes, sir. [66]

Mr. Nicoson: I offer this in evidence.

Trial Examiner Erickson: It will be received.

(Thereupon the document heretofore marked as Board's Exhibit 4, for identification, was received in evidence.)

Q. (By Mr. Nicoson) Now, I direct your attention to on or about July 21, 1941, and ask you if on that date anything happened in connection with the union?

A. On the 21st of July Joe Sardo, Angelo Castella, Nolan Berteaux, Lou Baliber, Don Quinn and myself, between 4:30 and 4:45 of that day, why, we went up to the union, and we signed up cards with Scotty, Harry Scott.

Mr. Nicoson: Will you mark that, please?

(Thereupon the document referred to was marked as Board's Exhibit 5, for identification.)

Q. (By Mr. Nicoson) I now hand you an instrument which, for the purpose of identification, has been marked Board's Exhibit 5, and ask you to examine it and state if that is the card you just referred to.

A. Yes, sir, that is the card I signed.

Q. At the union hall?

A. At the union hall.

Q. On the date shown on that card?

A. On the 21st of July.

(Testimony of Vito Cimarusti.)

Mr. Nicoson: I now offer this in evidence.

Mr. Shapiro: No objection. [67]

Trial Examiner Erickson: It will be received.

(Thereupon the document heretofore marked as Board's Exhibit 5, for identification, was received in evidence.)

BOARD'S EXHIBIT No 5

I, the undersigned voluntarily designate the International Ladies' Garment Workers' Union as my sole representative in collective bargaining with my employer.

Date 7-21-41

Name: Vito N. Cimarusti.

Address: 725 W. 51st St.

S. S. No. 562-01-2796. Craft: Cutter.

Firm: Lettie Lee Inc.

(Union Labor 111)

(Vuelta)

Q. (By Mr. Nicoson) Did anything else transpire at that time?

A. Well, the reason we went up there, we wanted to find out what the union would do for us, what protection they would do—what protection they would give us and what the procedure would be for us to go through, and Mr. Scott was pretty busy, he had a meeting coming up right away, and he told us, he says, "Listen, fellows," he said—

Mr. Shapiro: Just a moment. I am going to ob-

(Testimony of Vito Cimarusti.)

ject to any testimony as to conversations not in the presence of the employer or its representative—

Trial Examiner Erickson: Overruled.

Mr. Shapiro: On the ground it is hearsay.

Trial Examiner Erickson: Overruled.

The Witness: He stated, "Listen, fellows, I am pretty busy right now, but we will meet Wednesday night, and we will have dinner together, and then we will talk this thing out, and then we will go into the contract, and what the minimum is, and what protection we are going to give you, and the procedure of the strike."

Q. (By Mr. Nicoson) Did you meet with him later? [68]

A. We met with him on that Wednesday, which would make it the 23rd.

Q. Where did you meet with him?

A. We met him at the Alexandria Hotel.

Q. Who was present?

A. Angelo Castella, Don Quinn, Nolan Berteaux, Lou Baliber, and Joe Sardo.

Q. Was Mr. Scott there?

A. Mr. Scott was there.

Q. Was anyone else there?

A. And Lee Shapiro?

Q. Who is Shapiro?

A. He is one of the boys that was working on the organizing committee for the union at that time.

Q. Did you have a conversation at this meeting?

A. Yes. We went into the details of the strike and what protection the union would give us.

(Testimony of Vito Cimarusti.)

Mr. Shapiro: Just a moment. I am going to object to this on the same ground, on the ground it calls for hearsay testimony.

Trial Examiner Erickson: The objection is overruled.

The Witness: Well, he went in and proceeded to tell us what the contract would do for us.

Q. (By Mr. Nicoson): What did he say?

A. Well, the union would protect us and that the minimum [69] would be a certain amount of money.

Q. Did he mention the money?

A. Yes, he said about 43 or 44 dollars, something like that, and he told us about how the strike would be operated. We wanted to know when the strike would be, the fellows and myself, and he said, "Well, that's a secret we can't tell you, but we want you to be advised and to be prepared that when you see the picket line downstairs in front of your building, that means for you to join it, and do the right thing by you yourself and the union."

Q. State whether or not anything was said about the number of persons that had joined.

A. Well, he was glad to see six of us fellows up there, and said, "That is the majority of the shop, and we could collaborate for the cutters only, and take care of you fellows."

Mr. Shapiro: I move to strike the answer of the witness, commencing with, "That is the majority of the shop," on the ground it calls for a conclusion of the witness.

(Testimony of Vito Cimarusti.)

Mr. Nicoson: Well, that was a statement made.

Mr. Shapiro: It doesn't appear from the answer that that was a statement made. It appears that this is this witness' conclusion.

Trial Examiner Erickson: Are you repeating a conversation?

The Witness: I was repeating Mr. Scott's conversation, yes. [70]

Trial Examiner Erickson: Let the answer stand.

Q. (By Mr. Nicoson): Did anything happen the next day?

A. Well, the next morning, why, we came to work as usual and came in front of our building, and, well, the building was about, I would say about 100 feet or 150 feet away from 7th and Los Angeles—it is right on Los Angeles Street, and we could see there was a big picket line, and Nolan and I walked over to the cafeteria, and there was the rest of the fellows, and so we just stayed at the cafeteria there, and about, oh, I imagine an hour later, a half hour to an hour later, why, Joe came into the cafe and said, "Well, Lou is out there, wants—" and we met Mort Litwin at the cafe also that morning.

Q. By Joe, whom do you refer to?

A. Mort?

Q. No, by using the word "Joe", who do you mean?

A. Joe Sardo. And Litwin stayed down with us that morning. He was with us in the cafe, and then Joe came in and says, "Well, Lou is out there. He wants us to go up there, and Louis is talking to him."

(Testimony of Vito Cimarusti.)

And so we says, "Oh, let him go. We don't want to go with him." And pretty soon we says, "Well, let's all go out and talk to him." So we went out and talked to Lou, and he made the promise that if us fellows—

Mr. Shapiro: Just a minute. [71]

Mr. Nicoson: Yes, that is not responsive.

Mr. Shapiro: Who does he refer to when he mentions Lou?

The Witness: Lou Swarz.

Mr. Nicoson: Can we have an understanding that Lou is Lou Swarz?

Mr. Shapiro: If the witness says that is who he means.

The Witness: That is who I mean. We have a Lou and Louis, and to distinguish we call Lou Lou, and Louis Louis.

Mr. Shapiro: Well, I think we ought to call these people by their full names.

Q. (By Mr. Nicoson): By Lou Swarz, you refer to the head cutter? A. That's right.

Q. Did you have a conversation with this Lou Swarz at that time?

A. Personally, I didn't.

Q. You did not. Were you present at conversation? A. I was.

Q. And did you hear the conversation?

A. I did.

Q. State what it was, and who made the statement.

Mr. Shapiro: I will object to any testimony with

(Testimony of Vito Cimarusti.)

reference to any conversations between this witness or an others and Swarz, on the ground it doesn't appear that Swarz is an officer, agent or representative of the employer, and any statements [72] that he might make would not be binding upon the employer.

Trial Examiner Erickson: The objection is overruled.

Mr. Shapiro: On the further ground there has been no proper foundation laid showing the authority or the capacity of the gentleman, Mr. Swarz, to bind the employer.

Trial Examiner Erickson: Overruled.

The Witness: Well, Lou Swarz, when we walked up to the door, was talking to Louis Baliber, and he was trying to get him to go up to work.

Q. (By Mr. Nicoson): What was he saying?

A. He says, "Come on, Louis. Don't be a fool. Come on and go to work." And Louis says, no, he wouldn't do it.

Q. By Louis you mean?

A. Louis Baliber. And then we came up, and one of the other fellows, I don't remember who it was exactly, says, "Well, Lou, you said you would stay down with us if we all stayed down." He said, "I did."

"Then why are you doing this?"

Q. Who said, "I did"?

A. Lou Swarz. And then we talked to him. So he says, "Let me go park my car, and I will be

(Testimony of Vito Cimarusti.)

right with you." So he parked his car and came over to join us.

Q. Was he in a car at that time?

A. He was.

Q. Was anyone with him? [73]

A. No, he was alone.

Q. You say he did go and park his car?

A. He did go and park his car, and came and joined us fellows.

Q. Where did he join you?

A. He joined us in the cafe.

Q. Did you see Mr. Bothman that morning?

A. About 9:30 or 10:00 o'clock Mr. Bothman came into the Exchange Cafeteria there.

Q. Were you there? A. I was there.

Q. Did you see him? A. I saw him.

Q. Did he make any statements that you heard?

A. He says—first of all, he walked in and he said, "Fellows," he says, "I am surprised."

Q. Whom was he talking to?

A. He was talking to all the Lettie Lee cutters, and Lou Swarz was there. He says, "I am really surprised. You are the only ones who are down. The rest of them are all working."

And we didn't say anything to him. He says, "I think you are a bunch of fools. That's all I have to say. I am really surprised." He says, "Come on," he says, "go back to work. Don't be chumps." He says, "Any of you want to come back to work, come back with me right now." [74]

We said, "Oh, nothing doing, Mr. Bothman."

(Testimony of Vito Cimarusti.)

Then he started out the cafe, and one of the—I think Lou joined him, and the rest of us followed up, and I was with Mr. Bothman and Lou, and we walked down to the corner. And we were headed to the Labor Temple on 5th or 6th and Maple. That's where the strike headquarters were, and we all walked up there, and left them at 7th and Los Angeles Street, but Lou, instead of going with us; said he would join us right away, and he walked a little way with Mr. Bothman, and then came up to the Temple with us.

Q. That is Lou Swarz? A. Lou Swarz.

Q. Do you know where the Lettie Lee plant or factory is located?

A. Yes, sir. 719 South Los Angeles Street.

Q. Is that in a building by itself?

A. It is in a factory building, a 12 story factory building.

Q. By that do you mean there is more than one factory in that building?

A. Yes, sir.

Q. Do you know how many floors are in the building? A. There is 12 floors.

Q. Do you know what floors Lettie Lee occupies?

A. Lettie Lee, with the cutters and where the main factory all is is up on the 12th floor. They have better than three- [75] quarters of the loft up there.

Q. What is that?

A. They have better than three-quarters of the loft up there.

(Testimony of Vito Cimarusti.)

Q. Do they occupy any other space in the building?

A. On the seventh floor, I understand they have a small space. I know they have a small space there.

Q. Have you ever been there?

A. On the seventh floor, no.

Q. The cutters, do they work on the twelfth floor?

A. Yes, we cutters worked on the twelfth floor.

Q. Will you give us a description of the area in which the cutters worked?

A. Well, we have a partition there about eight to ten feet tall, with a screen that runs the rest of the way up to the ceiling almost, and we are all inclosed in this partition, the cutters are. And that is an area, I imagine, about the width of this court room, and the tables are about ten yards long. That would be about 30 feet.

Q. It would be about 30 feet long?

A. That's right.

Q. And as wide as this court room?

A. True, and there is three sections of tables.

Q. Where are there three sections of tables?

A. There is three sections of tables in the cutting room. [76] You see, it is about the width of this court room.

Q. How long? A. It is about——

Q. How far would you say it is? What is the distance?

(Testimony of Vito Cimarusti.)

A. I imagine that is about, I would say, roughly around 24 or 25 feet.

Q. Then what would you say would be, roughly, the distance of the length and breadth of the cutting room?

A. Well, the cutting room itself in length from the windows over to where the stock shelves are, I would say, is about 40 feet, 45 feet.

Q. About 40 or 45 feet?

A. 40 to 50 feet, to be more accurate.

Q. And about 25 feet wide, you say?

A. That's right.

Q. Does this partition——

A. (Continuing): Perhaps wider.

Q. Does this partition completely enclose the cutting space?

A. Well, from the end of the cutting tables on down to the windows, and, well, the cross section, and all, why, the partition is there and then there is a big shelf, a box like affair, where they keep threads and things, and then there is another table, and the stock room shelves to the left of the cutting tables. [77]

Q. Well, are there four walls around the cutting area? A. This partition also.

Q. Or is it open at one end?

A. It is, yes.

Q. It is open at one end. Is there anyone else that works behind that partition? I mean by that, between that and the rest of the factory?

A. Yes. There is the stock girl, Tony—I don't

(Testimony of Vito Cimarusti.)

know—Antoinette something or other, I don't know what her last name is.

Q. What are her duties, if you know?

A. Well, her duties are to get the materials for you and bring the cutters what orders they have, as they come to them.

Q. Does she do any cutting?

A. No, she doesn't do any cutting.

Q. Who else is in there?

A. Then there is the trimmers, as we call them.

Q. Do you know who they are?

A. Eunice, I don't know what her last name is, any Kathryn.

Q. Would that be Eunice Usher? Would that be one of them?

A. I imagine, Eunice Usher, yes.

Q. What does she do, if you know?

A. She is a sloper.

Q. What is a sloper? [78]

A. Well, if a dress has a pleated sleeve or a yoke that is embroidered, we would send it out in a square. Then when it came back from the pleaters or the *embroiders*, then she would take and lay her pattern on it, and mark it, and cut it to fit.

Q. What do you mean by "going out to the pleaters"?

A. Well, pleating is done outside of the factory by pleaters.

Q. That isn't done by Lettie Lee?

A. No, that isn't done by Lettie Lee.

(Testimony of Vito Cimarusti.)

Q. After you cut it, it would go to the pleaters outside of the factory?

A. No. Direct from us it would go to the as-sorters.

Q. To the assorters. From them would it go to the pleaters, do you know?

A. Why, I imagine it would.

Q. After it had been pleated at an outside plant, it then came back to the sloper? A. True.

Q. What would the sloper do then?

A. Then she would lay her pattern on it, she would lay the pieces for whatever style it would be, and would get the pattern of that particular style and lay it on there, mark around it, and cut it out to shape.

Q. What would she cut out?

A. If it was a sleeve, she would cut out a sleeve, or if it [79] was a yoke, a yoke, or whatever it was.

Q. Would she cut out the entire garment?

A. Just the sleeve. The cuffs, and everything else, would be cut by the cutter.

Q. You mean the cuffs would be joined later on by some operation? A. True.

Q. She would cut the sleeve?

A. Just the sleeve that is pleated, just the part that is pleated.

Q. What else would she do, if you know?

A. She cuts cotton and trim that went on the dress.

Q. What would she cut them for? What would she cut the cotton for?

(Testimony of Vito Cimarusti.)

A. For the padding for the shoulders, the shoulder pads.

Q. Now, what do you refer to when you say "trim"?

A. Well, belts, and inner linings, and, for instance, if it had a piece that was supposed to go into a bow, of a different material or color, she would cut that.

Q. What would she do with those things after she would cut them?

A. She would have an order slip to show where they would belong, and would take them back to the assorters and they would know what to do with it for that particular dress.

Q. The other girl you mentioned was Kathryn.

[80]

A. She was a trimmer there, but she wasn't there at the time we walked out on strike?

Q. Was there anyone else?

A. Dorothy something or other.

Q. Dorothy. Do you know whether that is Dorothy Richard?

A. Yes, it is Dorothy Richard.

Q. You think that is her name.

A. I am pretty sure.

Q. What did Dorothy do?

A. She was a trimmer, and she was cutting cotton, and the junk, as we called it.

Q. Now, by cotton, you mean the padding that goes in the shoulders and inside the belts? Is that what you mean?

A. True.

(Testimony of Vito Cimarusti.)

Q. Did she do any sloping?

A. No sloping.

Q. Or any trimming?

A. Trimming, and cutting the inner linings, and things like that

Q. She did that? A. Yes.

Q. Are there any other persons employed behind that partition? A. The assorters.

Q. How many are there? [81]

A. Well, there is Sarah, Marie, Frances; about four of them.

Q. If I give you their last names, would you recall them? A. I think so.

Q. Was Sarah's name Giochetti? A. Yes.

Q. And Marie Chavez, C-h-a-v-e-z?

A. That's right.

Q. Frances Avila, A-v-i-l-a?

A. That's right.

Q. And Saloma Sesma?

A. I know her first name was Saloma, and that Sesma must go with the rest of that.

Q. You don't know about that?

A. No, I don't know about that.

Q. Do you know what an assorter does?

A. Her duty is to take the work, after the cutters get the work cut, wrap it together, and bundle it.

Q. Who wraps it?

A. The cutters cut the patterns separately and roll it up together.

(Testimony of Vito Cimarusti.)

Q. What do you mean by "patterns separately"?

A. Well, the different parts that go to a dress.

Q. And what do you do with that?

A. We take it and bring it over to the assorter, with the [82] order number and the size tickets.

Q. All the parts of the dress you cut, you put in a bundle; is that correct?

A. That's right.

Q. And take it to the assorter?

A. That's right.

Q. Do you know what she does with that?

A. She checks up for notches, and for punch holes, and to see whether the dresses were cut on the right side of the material, and whether the parts are all matched right, and she puts all the pieces that went together in the garment in this one dress, and then she would tie it up and put a size ticket on it. From there it would go to the operator.

Q. By that do you mean that she would take the pieces that you had cut, such a sleeves, waists, skirts, and belts, and she would pick out two sleeves, a waist, skirt, a belt and put that in a bundle; is that correct?

A. That's right.

Q. And she would do that for each garment you would cut?

A. True.

Q. What would she do with that bundle she made?

A. After she would know, through checking, and see that everything is there that would go to that one garment, she would take it and put it into a

(Testimony of Vito Cimarusti.)

rack there, that they have the forelady take and give the work out to the girl. [83]

Q. What do you mean by "give the work out to the girls"?

A. After the dresses were all assorted and checked, she would take and put a size ticket on it, and on there there is a style number and size, and whoever the dress is to go to, why, she would tie this up and they have a rack there with bins, and she would go and put these in there and tell the forelady about it, and then whenever the forelady was ready for that particular style to be sewed, she would come and get a bundle of one or two or three dresses, whatever she wanted to give to a particular operator, and they would sew it up.

Q. Now, is there anyone else employed behind that partition? A. No, that's all.

Q. Does that partition completely shut off the cutters from the rest of the plant?

A. It cuts the cutters off from the rest of them. There is a door that leads off. It is not a swing door. It is just an open affair that we walk in and out of.

Q. Are the assorters between you and the door?

A. Yes, they are in the same room with us, but this door is over—we are over on the north end of the factory, and this wall is over facing towards the south.

Q. And is that where the assorters are located?

A. They are located to the east of the cutters.

Q. To the east of the cutters. Now, I believe

(Testimony of Vito Cimarusti.)

you said [84] this strike took place on July 24, 1941? A. That's correct.

Q. Did you after that have any conversation with Mr. Bothman, after the one in the restaurant?

A. On the 24th, we didn't have a conversation with him, no.

Q. Did you after the 24th?

A. After the 24th. On the 26th I had a conversation with him. He called me at my home.

Q. Over the telephone?

A. Over the telephone.

Q. What was said at that time, and who said it?

A. Well, when he called he asked for me and my wife called me to the phone, and when I got there, I picked it up and answered it. He says, "Hello. Vito?"

I says, "Yes."

"This is Mr. Bothman," he says. "Well, what did you boys want to do this to me for? What did I do to you fellows? I treated you all right."

And I agreed with him, he treated us all right, but then he went on to say, "Why, those shysters up there, they can't do anything for you. They are just looking out for themselves." He says, "I am really surprised. The rest of the boys are working," and he says, "some of them are coming in Monday to work for me." He says, "I want you to come in."

I told him I didn't think it would be the proper thing [85] for me to do, because the reason why I joined the union was because 90 per cent of the

(Testimony of Vito Cimarusti.)

industry was union, and if I wanted a job, I wasn't going to work for him all my life, and if I wanted a job in the future, the only place I could go to was the union, and I would be out of luck; and it was a protection for us, and they were the only protection that the working man had. That's what I thought, and told him so.

Well, he said, "Think it over, Vito, if I were you, and let me know."

So that's all that was said that night.

Q. State whether or not anything was said about a contract.

A. Well, if he had to sign up a contract with the union——

Q. Is that what he said?

A. Yes, if he had to sign up with the union that night, he would close up, Lettie Lee would go to Texas and he would open another shop, or do something.

Q. Thereafter, did you have any conversation with Mr. Bothman?

A. Yes, down in the lobby of the building there, he saw me once.

Q. About how long after this telephone conversation?

A. I would say about a month later.

Q. Who was present at that time, if you recall.

A. I think just Mr. Bothman and I [86]

Q. What was said at that time, and who said it?

A. He says, "Don't be a damned fool. Go on up and go to work."

(Testimony of Vito Cimarusti.)

I says—I hated to say no right off the bat to his face, and yet at the same time, you know how you are in a situation like that—I just said, “I will think it over and let you know.” That is all that was said at that time, and I never let him know.

Q. Did you later have another conversation with him?

A. Then later Mr. Nick LaCaze met him in the lobby, who is a presser in the place.

Q. About when did that occur?

A. That happened about two or three weeks later; just about that time. Maybe a week later.

Q. Would that take it up into September?

A. That’s right.

Q. About what part of September?

A. About the middle.

Q. And you say this conversation took place where? A. In the lobby of the building also.

Q. Who was present at time?

A. Nick La Caze, myself and Mr. Bothman. Nick and I were having a coke in there, and Mr. Bothman came up and said, “Don’t be a damned fool. Go in and go to work.”

I told him, well, maybe Nick and I would be in that week [87] to see him, but we never did go in.

Q. Did you subsequently have another conversation with Mr. Bothman?

A. Then on a Saturday morning, about a week or two weeks, I don’t remember exactly how many days, later, but on a Saturday morning there on the picket line, there was Nick, Don Quinn, Nolan

(Testimony of Vito Cimarusti.)

Berteaux, and myself. We talked to Mr. Bothman, and he wanted us——

Q. Where?

A. We talked to him in front of the building, just at the entrance to the lobby of the building.

Q. Tell us what was said and who said it.

A. And he started to tell us about those shysters up there again, and he wouldn't have nothing to do with them, but then he says, "I want you fellows to come back to work."

We says, "Well, you will have to talk to the union."

He says, "Well, I want you fellows to come back."

Then we brought up about Lou Baliber and Joe Sardo, wanted to know if he wanted them back. He says, "No, I am talking to you as individuals. I am not going to talk to you in a group."

He says, "You Vito Cimarusti, I want you to come back and go to work right now."

In the meantime, there was a friend of his happened to be passing by, and he says, "Come here. I want you to be a [88] witness to this."

I think this was in October, about a month later than the meeting in the building there. He says, "I want you to be a witness to this."

He says, "You, Vito Cimarusti," and he had me pronounce my last name, "I am telling you as an individual, to come back to work."

And he says, "You, Nolan Berteaux, I am telling you, as an individual, to come back to work."

(Testimony of Vito Cimarusti.)

“You, Nick La Caze, I am telling you, as an individual, to come back to work.”

“You, Don Quinn, I am telling you, as an individual, to come back to work.”

We says, “How about the others, Angelo, and Joe and Louis?”

He says, Well, Angelo and Louis are a couple of stinkers, and Joe is an ex-convict. Joe and Louis are both trouble makers”—I take that back—“Louis and Angelo are just trouble makers.”

Q. Louis and Angelo are what?

A. Are trouble makers.

Q. Did you make any reply to that?

A. Well, we said, “The only time we would come back would be when we would all come back as a group, and we would have the union behind us.”

[89]

Q. Following that, did you have any more conversations with Mr. Bothman? A. No.

Q. Did you have a conversation with Lou Swartz later?

A. Yes. He called me at my home, Lou Swartz did.

Q. About when did that take place?

A. Oh, that happened in October some time, about—

Q. Was that after you had the meeting with, or you had this conversation with Mr. Bothman?

A. Yes. That was about two or three weeks later.

Q. About two or three weeks later. Was it in

(Testimony of Vito Cimarusti.)

the middle, or fore part or latter part of October, would you say?

A. I would say it was between the middle and the latter part of October.

Q. Of October. Where did the conversation take place?

A. It took place over the phone. He called me at my home.

Q. What was said and who said it?

Mr. Shapiro: I am going to object to any conversations between the witness and Mr. Swartz on the ground that the authority of Mr. Swartz has not been shown, and no proper foundation laid.

Trial Examiner Erickson: Overruled.

The Witness: Mr. Swartz called at my home there, and I was ready, getting ready to go out when my wife called me to the phone. I answered. "Vito?" he says. [90]

"Yes."

"This is Lou," and by "Lou" he meant Lou Swartz.

I says, "Yes."

He said, "Did Don Quinn talk to you?"

I said, "Yes."

He said, "Did he tell you to come back to work, that I wanted you to come back to work?"

I says, "Yes."

He says, "What did you tell him?"

"Oh," I says, "oh, we didn't want to come back to work."

He says, "Well, I think, Vito, you are a fool for

(Testimony of Vito Cimarusti.)

not coming back to work," he says, "because them guys are not going to do anything for you."

By "them guys" he meant the union, the representatives in the union.

He says, "They are going to dump you right away, and you are going to be left holding the sack."

I says, "Well, Lou, I am stringing along with the union. They are the only chance we have, and they are the only protection we have, and that's our best bet."

Then he went on to tell me why he didn't stay with us. He says, "I am getting so much a week and a bonus." He says, "I have all to lose and nothing to gain by it."

I said I figured he was a chump for coming down in the first place. [91]

He said, "You better come back to work. The M & M is protecting us," he says.

Q. Who is the "M & M"?

A. The Merchants and Manufacturers. He says, "They are joined up 100 per cent," and he says, "I will tell you another thing, some of the union shops are signed up with the M & M too."

I says, "I would rather stick with the union than play ball with them."

He says, "I would think it over, if I were you. Before Mr. Bothman would sign a contract there, he would close up the shop, Lettie Lee will go to Texas and run the ranch, and he will go into something else."

Q. Anything further at that time?

(Testimony of Vito Cimarusti.)

A. Well, he told me about all this protection that I would get from the M & M.

Q. What did he say about that?

A. He said, "You will have a guard with you." He says, "You will be at home all the time." He says, "They will take you home and bring you back," and just tried to make me feel secure in going back to work.

Well, I didn't like to go to work under those conditions.

Q. Did you ever after that time have a conversation with Mr. Swartz?

A. No. Before I went out that night, I told my mother and [92] wife, I went to school——

Q. Never mind what you told your mother and wife. Did you later have a conversation with Mr. Bothman? A. No, I didn't.

Mr. Nicoson: That is all. You may cross examine.

Trial Examiner Erickson: We will recess for ten minutes.

(A ten minute recess was taken.)

Trial Examiner Erickson: The proceeding will come to order.

Mr. Shapiro: Your Honor, at this time I am going to ask that the Board make an order excluding the witnesses from the court room during the time that the testimony is being elicited. I appreciate it is entirely discretionary with the Court, but I do feel, and possibly I should have made the motion earlier, that when the witness is on the stand

(Testimony of Vito Cimarusti.)

relating what happened and every member on the picket line is in the court room listening to his testimony, that there isn't any question but what their memories might be refreshed or they might be otherwise assisted when their time comes to give testimony, and I think in the exercise of your Honor's discretion such an order should be made.

Mr. Sokol: May I say a word?

Trial Examiner Erickson: Yes.

Mr. Sokol: Mr. Examiner, I am glad Mr. Shapiro gave you [93] the law in California, which makes it purely discretionary with the court, and the courts have uniformly held that where the proceedings have advanced to a stage where the other witnesses in the court room have heard the testimony, then it would be an idle act; and, unquestionably, Mr. Shapiro has waited until this witness has fully testified on direct, and if there was any harm done from his point of view, it is already done. I don't see any. And, furthermore, your Honor should take into account the facilities here, which make it somewhat inconvenient. We don't have adjacent court rooms in which they can sit.

Trial Examiner Erickson: The motion will be denied for the present.

Does the union have any questions?

Mr. Sokol: No questions.

Trial Examiner Erickson: Cross examine, Mr. Shapiro.

(Testimony of Vito Cimarusti.)

Cross Examination

By Mr. Shapiro:

Q. Now, you pronounce your name Cimarusti?

A. That's right.

Q. When you applied for employment at Lettie Lee some time in February, 1941, did you talk to anyone other than Mr. Bothman?

A. I didn't apply in February. I applied in the preceding year, about July or August. I was called to work there in February. I went to work there in February. [94]

Q. I see. Then when you applied for employment in July, that would be 1940, wouldn't it?

A. That's right.

Q. Did you talk to anyone other than Mr. Bothman? A. No, sir.

Q. And you say Mr. Bothman recognized you?

A. That's right.

Q. Where had you known Mr. Bothman previously?

A. When he was with Bothman Brothers concern. He had his own concern over in the Harris Newmark Building.

Q. Did you work for him then?

A. No, but the concern I was working for at that time did work for Mr. Bothman.

Q. I see. You say that Mr. Bothman asked you if you belonged to a union? A. Yes, sir.

Q. Did he ask you if you belonged to any particular union?

(Testimony of Vito Cimarusti.)

A. He asked me if I belonged to that Cutters Union.

Q. You didn't belong to it, did you?

A. Not at that time.

Q. You told him that, didn't you?

A. I did.

Q. Did Mr. Bothman say anything at that time about the union?

A. No, not at that time. [95]

Q. He didn't tell you that if you did belong to a union he wouldn't hire you, did he?

A. No, he didn't say that.

Q. Now, you have referred in your testimony repeatedly to a Mr. Swartz. You call him Lou Swartz?

A. That's right.

Q. He is a cutter, isn't he?

A. He is the pattern maker and general manager. He hands out the work up at Lettie Lee.

Q. What do you mean, the general manager?

A. Well, if you want to know anything, Lou is the one you would ask.

Q. You mean he was the head of the cutting department?

A. That's right.

Q. He wasn't the general manager of Lettie Lee?

A. General manager of the cutting department is what I meant when I said that.

Q. Well, it might be more appropriate to refer to him as the foreman of the cutting department; isn't that right?

(Testimony of Vito Cimarusti.)

Mr. Sokol: That is objected to as leading and suggestive.

Trial Examiner Erickson: He may answer.

The Witness: What was the question again?

Q. (By Mr. Shapiro) It might be more appropriate to refer to him as the foreman of the cutting room; isn't that so? A. True. [96]

Q. He isn't the general manager of Lettie Lee, is he?

A. Well, every time there is anything came up, the foreladies and everyone would go to Lou.

Q. That is with respect to the performance of your work? A. Of the work.

Q. He was in charge of the cutters that were operating in that department; isn't that so?

A. That's right.

Q. Now, on June 11, 1941, when you say there was a meeting in the cutting room at about 4:30, how many men were there present?

A. Including Mr. Bothman, nine.

Q. Will you name those men?

A. Lou Swartz, Mort Litwin, Joe Sardo, Louis Baliber, Angelo Castella, Don Quinn, Nolan Berteaux, and myself. Mr. Bothman made the ninth person.

Q. How many cutters were there on that date?

A. Seven cutters and Lou.

Q. Mr. Swartz worked, didn't he? He cut right along with the rest of you?

A. No. He just made the patterns.

Q. And the rest of you—

(Testimony of Vito Cimarusti.)

A. The rest of us did the cutting.

Q. —did the cutting. On June 11th how many persons were there employed within this area that is enclosed by the [97] partition that you have referred to?

A. On June 11th I didn't work, and I couldn't tell you, but I can tell you about June the 12th.

Q. How many were there on June 12th?

A. All the cutters; that is, all the fellows I just named, and myself, and there was Eunice, and the assorters; not all of them. I don't think they were all there at that time. And Tony, the stock girl.

Q. As a matter of fact, there were 15 people employed in that unit at that time, were there not?

Mr. Nicoson: We object to that. He calls it a unit. If he wants to talk about the area, all right.

Trial Examiner Erickson: You mean in that room?

Mr. Shapiro: In that room, in that area.

The Witness: Approximately.

Q. (By Mr. Shapiro) Do you know how many persons are employed by Lettie Lee?

Mr. Sokol: As of the present time? Is that what you are asking?

Mr. Shapiro: On June 12th.

The Witness: Well, if some were off, I can't tell you definitely, but I know the capacity. It is around 120, 121.

Q. (By Mr. Shapiro) Approximately 120; is that right? A. Yes.

(Testimony of Vito Cimarusti.)

Q. Now, on June 11, 1941, when you attended this meeting [98] that was called in the cutting room at about 4:30, did you know the purpose of that meeting before you went in to it?

A. Before I came into it, yes, Lou Swartz told me over the phone.

Q. What did he tell you?

A. He said the boys had a meeting with Mr. Bothman in regard to a raise, and he wanted me in on it.

Q. He told you they had a meeting?

A. No, they were going to have a meeting.

Q. Had there been any discussion before June 11th about a raise, that you knew of?

A. No, not that I knew of before I was off.

Q. How long had you been off?

A. I would say about two weeks, three weeks, something like that.

Q. Well, there was no discussion about wages or an increase of wages, that you knew of?

A. Prior to that things were said, but then they didn't go into details with me, and then that day I heard about it.

Q. Now, what date did you sign with the union?

A. July the 21st.

Q. When you got to this meeting on June 11th, you say there were about eight men there; is that correct? You said that there were nine men, including Mr. Bothman, present?

A. Yes. [99]

Q. That was on June 11th?

A. That's right.

(Testimony of Vito Cimarusti.)

Q. Did Mr. Bothman handle the meeting? Did he seem to be in charge? A. Yes.

Q. He did all the talking?

A. He asked for questions to be answered, and they were answered.

Q. What did Mr. Swartz do?

A. He asked a couple questions there.

Q. What did he have to say?

A. Well, they—he just seemed to side in with Mr. Bothman in collaborating the fellows' feelings towards the union, that they didn't belong to the union, and all that.

Q. Well, at that time none of you did belong to the union?

A. I didn't. I don't know about the rest.

Q. Had you told anybody you intended to join the union? A. I never committed myself.

Q. Had anyone asked you if you were going to join the union? A. Yes.

Q. Who?

A. The fellows around with those pamphlets being passed out, and the cuters that knew me asked me if I would join. I would never commit myself.

Q. Other union members, you mean? [100]

A. Other union members.

Q. Mr. Bothman hadn't asked you if you were going to join the union?

A. That night he did. Not me in particular, but just the group.

Q. What did he say about that?

A. "First of all," he says, "I want to know how

(Testimony of Vito Cimarusti.)

many of you belong to that union or intend to join that union." He got no answer.

Q. He got no answer at all? A. True.

Q. You didn't say anything?

A. I didn't say a word.

Q. Did anyone else say anything?

A. Not that I remember.

Q. You mean to say that all the cutters that were assembled there didn't say a word all through the proceeding?

Mr. Sokol: He didn't say that.

Mr. Shapiro: What is your answer?

Mr. Sokol: That is objected to. It is already in the record.

Trial Examiner Erickson: Overruled.

The Witness: No one said a thing to him.

Q. (By Mr. Shapiro) Not a word?

A. Just smiled, and sort of kept to ourselves. [101]

Q. How long did the meeting last?

A. About 20 minutes to a half hour.

Q. Now, do you know whether or not any of the cutters, or anyone speaking for the cutters, had previously approached Mr. Bothman with respect to a raise in salary?

A. You mean before June the 11th?

Q. Before June 11th? A. I don't know.

Q. You didn't, did you? A. No, I didn't.

Q. Was this offer to increase your wages something that just came out of the clear sky, so far as you knew? A. Personally, yes.

(Testimony of Vito Cimarusti.)

Q. You did not have any objection to an increase in wages, of course?

A. Of course not.

Q. And you were getting \$1.00 an hour at that time?

A. That's right.

Q. What was the proposal that Mr. Bothman made with reference to an increase in wages?

A. The proposal was that he would either give us the raise, or we could take overtime which would more than make up for the raise.

Q. What did you say, if anything.

A. He just wanted us to think it over and give him an [102] answer later. We none of us committed ourselves that particular night. We just wanted to think it over and talk among ourselves, and see what we wanted.

Q. Did you know there was going to be a strike?

A. Through pamphlets to that effect, yes.

Q. So that when Mr. Bothman told you there was going to be a strike it wasn't news to you and you already knew about it, didn't you?

A. Well, he knew about it just like I did, through those pamphlets, I think. I didn't know anything other than that.

Q. What else did Mr. Bothman say to you regarding joining the union, if he said anything?

A. He said as far as those shysters are concerned, he wouldn't have anything to do with them.

Q. Did he say anything about the employees, or what might happen to them if they joined the union?

(Testimony of Vito Cimarusti.)

A. He didn't say a thing there.

Q. He didn't say that you couldn't join the union, did he?

A. Well, he gave us to understand the laws of the land made it compulsory for him to do by what the majority of the cutters wanted.

Q. What did he say about that?

A. Well, we didn't go into a discussion.

Q. How did he give you to understand that?

A. Well, he left the general impression. [103]

Q. He didn't tell you that if you joined the union that you would lose your jobs, did he?

A. Well——

Q. Just answer that "yes" or "no."

A. No.

Q. He didn't tell you——

Mr. Sokol: You may explain your answer, if you so desire.

The Witness: The reason for that is that if he said that, it would be belittling his own intelligence, because, after all, we are not babies, and he would come right out and say a thing like that. He would be committing himself to a point of prejudice against labor.

Q. (By Mr. Shapiro) But he never made a statement to you that if you joined the union you couldn't hold your job at Lettie Lee, did he?

Mr. Nicoson: We object to that as repetitious. He has already answered that.

Trial Examiner Erickson: Sustained.

(Testimony of Vito Cimarusti.)

Q. (By Mr. Shapiro) Now, when was the next meeting that you had with Mr. Bothman, after the meeting of June 11th?

A. On Friday night, June 13th.

Q. Who was presnt at that meeting?

A. The same fellows I mentioned a while ago, and Mr. Bothman.

Q. Had you discussed between June 11th and June 13th the question of the wage increase? [104]

A. You mean amongst the fellows?

Q. Amongst the fellows. A. Yes, sir.

Q. Had you come to a decision on that?

A. Yes, sir.

Q. What had you decided?

A. We decided we wanted the raise.

Q. Who, other than you fellows, was present at the meeting on June 13th?

A. Just the fellows and Mr. Bothman.

Q. Was Mr. Swartz there?

A. Well, those are the fellows, yes. Swartz, Litwin, Sardo, Baliber, Castella, Don Quinn, Nolan Berteaux and myself.

Q. Who spoke first at the meeting?

A. Mr. Bothman came in.

Q. What did he say?

A. He said, "Well, fellows, I understand you want the raise. You want to know how much. It would be 15 cents an hour. You want to know when it starts. Immediately."

And he says, "I hope this satifies you fellows, and if necessary in the future, if you want more, why,

(Testimony of Vito Cimarusti.)

we can discuss it, as long as we work harmoniously together and have nothing to do with outsiders.”

And Lou Swartz spoke up and says, “I can vouch for these [105] fellows, Mr. Bothman.”

Q. What else was said, if anything?

A. That’s all.

Mr. Sokol: When you said “fellows” did you mean the cutters?

The Witness: The cutters only.

Q. (By Mr. Shapiro) Did Mr. Bothman say anything about your joining or not joining the union? A. Not that night, no.

Q. Mr. Bothman didn’t tell you that this wage increase was given to you so that you would not join the union, did he?

A. He felt secure that if we got the raise——

Q. Just a moment.

Mr. Sokol: Let him complete the answer now.

Mr. Nicoson: Let him complete his answer.

Mr. Shapiro: The witness can’t answer a question by saying——

Trial Examiner Erickson: Just a moment. He started out by saying, “he felt.”

The Witness: He felt secure——

Mr. Nicoson: “He felt secure” is a quotation.

Trial Examiner Erickson: Proceed.

The Witness: He felt secure in giving us the raise that we wouldn’t have anything to do with the union.

Q. (By Mr. Shapiro) Who said that? [106]

(Testimony of Vito Cimarusti.)

A. He didn't say that, but that is the impression he left with us fellows.

Mr. Shapiro: I move to strike the answer on the ground it calls for a conclusion of the witness.

Trial Examiner Erickson: It may be stricken.

Q. (By Mr. Shapiro) Did Mr. Bothman at any time, either at the meeting on June 11th or at the meeting on June 13th, tell you or any of the others present that if you did not join the union he would give you a wage increase? And answer that "yes" or "no," please. A. No.

Q. How soon after you obtained your wage increase was it that you commenced feeling some dissatisfaction with your conditions of employment?

Mr. Nicoson: I object to that. There is nothing in the record that shows any dissatisfaction on his part.

Trial Examiner Erickson: Objection sustained.

Q. (By Mr. Shapiro) Now, this partition that you have testified about, it doesn't extend from the floor to the ceiling, does it? A. No.

Q. As a matter of fact, you can see over the partition, can't you?

A. If you jump up on the tables and stand up on your toes.

Q. How high is the partition? [107]

A. About ten feet, twelve feet, something like that.

Q. Do you know how high the ceiling is in that room?

A. About the height of this ceiling.

(Testimony of Vito Cimarusti.)

Q. Well, would you say the partition goes up just about as high as the paneling in this room?

A. Yes, I would say the partition was that high, and there is a screen wire goes up the rest of the way.

Q. Now, the enclosure formed by the partition is bounded on two sides, is it not, by the walls of the building? A. True.

Q. And the partition is just one length then; isn't that correct? A. It is one length, yes.

Q. One wall. It forms the south wall of that particular portion of the building; is that right?

A. That's right.

Q. And one end is open?

A. Where the partition leaves off, there is a little opening there, and then there is the rest of the paraphernalia around there like the bins, and things. There is a counter there.

Q. As to the work that you perform as a cutter, will you tell me this: Do you finish or complete anything in the operation that you perform?

A. A lot of times I did, yes.

Q. Well, what, for instance? [108]

A. I cut the complete garment, trim and all.

Q. Well, I understand that, but still it would be an unfinished garment, wouldn't it?

A. I didn't sew it, no, if that is what you mean.

Q. It would have to be assembled and have to be put together, and have to go through the various

(Testimony of Vito Cimarusti.)

other operations necessary before it was a completed garment; is that right? A. Yes.

Q. And the same is true of every other cutter working there; isn't that so? A. True.

Q. No one of you worked on any particular garment to the point where it was completed?

A. As far as cutting was concerned, it was completed.

Q. But not so far as the finished garment is concerned? A. True.

Q. After the garment is cut, what would remain to be done on it before it is completed?

A. Sewing, finishing, pressing.

Q. As a matter of fact, your work of cutting out the garment is one of the very first stages in the manufacture of the dress; isn't that so?

A. True.

Q. Now, you follow a pattern when you cut a garment, don't you? [109]

A. Yes, sir.

Q. Did you make any of the patterns?

A. When there weren't any that were made, why, if it was necessary, I would take care of it.

Q. Customarily and ordinarily, who made the patterns?

A. Mort Litwin. He made the markers. The patterns for the garments were made by Lou Swartz. The markers, that is making the markings on paper, were made by Mort Litwin.

Q. Now, for my edification will you explain the

(Testimony of Vito Cimarusti.)

difference between a pattern and a marker? Which is made first?

A. The pattern is made first.

Q. What is that made of?

A. That is made of paper. It is made for the different parts that go into the dress, out of that piece of paper there, and then after they are all made, then they make a marker out of these patterns, the different sizes.

Q. Just what is a marker? Explain that.

Mr. Sokol: If I am not out of line, Mr. Shapiro, I would like to make the suggestion that no doubt Mr. Bothman will take the stand and give the facts from his point of view.

Mr. Nicoson: I think the witness should be permitted to answer.

Trial Examiner Erickson: The objection is overruled.

The Witness: The marker is made by this Mort Litwin. That was his job. As he put these patterns on and lays them [110] out to take the least amount of yardage, he marks them in and would have carbon markers underneath, which made about six markers at a time, and he would have them all rolled out. And if he was out at any time, we would have to make our own markers on a single sheet of paper.

Q. (By Mr. Shapiro): When you are ready to cut a dress, will you explain exactly what you do with reference to the use of the marker, the material, and any other operations that you perform?

(Testimony of Vito Cimarusti.)

A. Well, if we had a certain style to cut, we would have our orders there to go by, and say, for instance, the last style that I cut there was 705, it was sizes from 12 to 20. Well, I would start off with the largest size and work my way down to the 12.

For those two dresses of size 20, I would lay out my bottom paper, lay out the cloth, whatever was called for on the order, and the colors, and lay my marker on that, and weight it down so that the marker wouldn't shift, and cut it out.

Q. Either with your hand shears—

A. With my hand shears, mostly.

Q. And if it was a larger thickness of material, you would have used the power shears?

A. Used the machine, that's right.

Q. But what you would do is that you would put the marker [111] down on the cloth and cut around it?

A. That's right.

Q. And that is what your cutting operations consist of?

A. Yes.

Q. Now, will you explain what Eunice Usher's work consisted of?

A. Her work was sloping.

Q. Just tell us what she did.

A. Well, there are some styles there that had a pleated sleeve on it, and we would send out a block of material, say a sleeve 20 inches by 17 or 18 long, well, we would send out this block of material and they would pleat it, and when it came back it would still be in a square, and she would

(Testimony of Vito Cimarusti.)

lay her sleeve pattern on it, mark around it, and cut the sleeve out.

Q. In other words, she did exactly the same thing that you did?

A. No, she just did sloping.

Q. Except you call it sloping, and she did it on material that had been pleated?

A. That's right.

Q. That's right, isn't it?

A. She didn't do the same thing we did, just cutting out a piece of material. If it was spoiled, it could be replaced, whereas if we spoiled anything, it would cost us. [112]

Q. How do you know that if Eunice spoiled a piece of material it wasn't chargeable to her?

A. I have never heard anything told her, whereas it was told to me directly.

Q. So that the only difference in what she did and what you did was that if she spoiled something, she didn't pay for it, and if you spoiled something, you had to pay for it?

A. And a lot of other things she did there—or, that the cutters did, that she couldn't do.

Q. Isn't this true, that in your work you took the marker, you laid it on the cloth and you cut around the marker? That is what your work consisted of; isn't that right? A. That's right.

Q. In her work she took the material after it had been sent out to some independent concern and been pleated, and you say it was in the square, and you mean by that still in one large sheet of mate-

(Testimony of Vito Cimarusti.)

rial, and she would lay the pattern on, mark it on top of that, and she would cut around it; is that right?

A. She didn't lay the marker. She would just get the pattern and mark around it, and probably would be a half a day cutting out one pattern.

Q. But she marked out what was to be cut, and she proceeded to cut it, didn't she?

A. She would proceed to cut after Lou had straightened her [113] out on a lot of things; Mr. Swartz.

Q. Why did Lou Swartz have to straighten her out?

A. Because if it had to be cut on the grain, or on the bias, she had to get her information from him, whereas we wouldn't have to.

Q. Isn't it true that the markers that Mr. Litwin made, which you followed, indicated right on the markers how they were to be laid with reference to the grain?

A. Yes, the markers had to have an arrow on them.

Q. And you followed those directions or instructions, as indicated on the marker; is that right?

A. That's right.

Q. And Mr. Swartz, you say, would explain to Miss Usher which way to lay the pattern and how the grain was to run; is that right?

A. That's right.

Q. Then she would cut out the pattern?

A. That's right.

(Testimony of Vito Cimarusti.)

Q. What else did Miss Usher do besides this work?

A. She cut cotton shoulder pads, inner linings for belts, and jabots, and things like that.

Q. Will you explain how she performed those respective operations?

A. Well, the cotton, if it was a stock order, why, she would lay up cotton about four or five inches high and use [114] the cutting machine, and if anything was spoiled, there wouldn't be a lot of money involved, because it was just a small piece of cotton.

Q. Did she use the same type of cutting machine that you used? A. That's right.

Q. Did she use a marker?

A. Well, we would mark our own cotton padding. We would make our own marker.

Q. What would you mark with?

A. With chalk.

Q. And she would cut around the chalk lines where you would mark; is that right?

A. That's right.

Q. What else did Miss Usher do?

A. I told you everything else.

Q. Have you told us everything that Miss Usher did? A. That's right, I did.

Q. She didn't do any other kind of work then, as I understand your testimony, other than cutting this material, either the pleated material, or the cotton, or the padding or other materials that you last referred to; is that correct?

(Testimony of Vito Cimarusti.)

A. That's right.

Q. Now, was there anyone else in the area enclosed by this partition that did the same kind of work as Eunice Usher? [115]

A. This Dorothy cut trim, but she didn't do the sloping, because she didn't know anything about sloping.

Q. That is Dorothy Richard?

A. That's right.

Q. What do you mean by "cut trim"?

A. Well, like the cotton padding, if there was one or two plies to be cut, she would cut them with shears; or belt linings, or general trim, like inner linings.

Q. And would she use a marker?

A. No. She would use her own patterns, and work over them, and ask questions on how to do it.

Q. All of these various parts of the dress that were being cut out either by you gentlemen, who were cutters, or by Miss Richard or Miss Usher, all went into the finished product, did they not?

A. True.

Q. And the pads and the trim, and everything else, had to be cut out, didn't it? A. Yes.

Q. I assume that you would mark out for Miss Richard what you wanted cut, and how you wanted it cut; isn't that right? A. True.

Q. Or would she use her own judgment about those things?

A. Sometimes she would use her own judgment,

(Testimony of Vito Cimarusti.)

but most of the times we would tell her how we wanted it. [116]

Q. What did she use in cutting?

A. Shears.

Q. She never used the power shears?

A. I have never seen her use them.

Q. Outside of Dorothy Richard and Eunice Usher, what other ladies in that department performed any kind of cutting operations?

A. That's all.

Q. Did you know a Kathryn Lembke?

A. Kathryn Lembke was there before I got laid off, but after I came back I didn't see her any more. That was on June 11th. Prior to that she was there. When I came back on June 12th to work, she wasn't there.

Q. Did you ever work there when Miss Lembke was working? A. Yes.

Q. What were her duties?

A. She would cut trim.

Q. The same as Miss Usher?

A. The same as Miss Usher, yes. Her duties were just about the same as Miss Usher's.

Q. So, in brief, you could summarize what she did and how she did it by referring us to your—

A. Testimony.

Q. —testimony concerning Miss Usher; is that right? A. That's right. [117]

Q. Now, what other ladies were there in that department? A. The assorters.

(Testimony of Vito Cimarusti.)

Mr. Nicoson: I think I will object to the use of the word "department."

Mr. Shapiro: All right. In that area.

The Witness: The assorters.

Q. (By Mr. Shapiro): Are they also known as bundlers? A. Assorters or bundlers, yes.

Q. Were there any other ladies who performed any cutting operations of any kind, other than Miss Lembke, Miss Richard and Miss Usher?

A. No.

Q. Do you know whether or not women are eligible to membership in the union?

A. In the union?

Q. Yes, in the Cutters Local?

A. If they are cutters, yes.

Mr. Sokol: I will object to that, your Honor. He would not be qualified to testify to that.

Mr. Shapiro: He is a member of the union.

Trial Examiner Erickson: He may give his best information.

Mr. Shapiro: Pardon me?

Trial Examiner Erickson: I said he may give his best information.

Q. (By Mr. Shapiro): What is your best information? [118]

A. I said if the woman is a cutter, she is eligible for Local 84, the Cutters Union.

Q. Do you know any women cutters who are members of Local 84? A. No, I don't.

Q. Now, will you describe the duties of the assorters or bundlers?

(Testimony of Vito Cimarusti.)

A. A cutter would cut the work out and the different parts to the garment are rolled up into a bundle, with the size tickets and the order, when it was completed, and take it over to the assorter. Usually, we would give it to Sarah, I don't know what her last name is, but she is the head assorter there, give it to her, and tell her what order it is. And she would say, "O. K." and that was all there was to it.

Q. What would she do with it?

A. She would take and sort it out to see if all the parts were together, were paired, and to see the notches were all right and punch holes were all right, and the trim was all there. And she would tie it up into a complete assembly there, what was supposed to be together there, and she would put it in the bins for the forelady to give out.

Q. Did she also include in this bundle the work that had been done by Miss Richard, Miss Usher and Miss Lembke? Would that be a part of the bundle?

A. That is what I said. She put the trim in too. [119]

Q. I see. Then she would check it to see that it was cut according to the pattern or the marker and that it was in position to be assembled; is that right?

A. Yes.

Q. Then she would send it to the proper department?

A. That's right.

Q. Now, you say that is what Sarah did. You refer to Sarah——

(Testimony of Vito Cimarusti.)

Mr. Shapiro: Do you know how to pronounce that name?

Mr. Nicolson: Giochetti, I think it is.

Q. (By Mr. Shapiro): —Giochetti? Is that who it is? A. Yes.

Q. What did the other ladies do? What were their duties?

A. I said I gave them to Sarah, because she was the head cutter—the head assorter, rather, and she would give it to the girls as they needed it. Their work was the same.

Q. In other words, she was more or less in charge of the other three ladies?

A. That's right.

Q. And she would take the work and parcel it out to the others? A. That's right.

Q. But that is all their work consisted of, to see that the material was cut properly and laid out properly, so that it could go to the next department in the manufacture of the dress; is that right? [120]

A. That's right.

Q. Did these ladies do anything else besides these particular duties you have told us about?

A. Not that I know of.

Q. Now, were there any other employees within this area enclosed by the partition and the two walls of the building, other than the cutters, the men to whom you have previously referred to by name, the three ladies, Miss Lembke, Miss Richard and Miss Usher, and the four ladies who did the bundling or assembling?

(Testimony of Vito Cimarusti.)

Eunice was there,—when Kathryn was there, Dolly or Dorothy wasn't there. At the time Dorothy was there, Kathryn wasn't there.

Q. All right. Then that would limit it to 15 persons at any one time; is that correct?

A. That's right.

Q. How many times has Mr. Bothman asked you to come back to work?

A. Every time I got laid off I was called back. I don't know whether Mr. Bothman—you mean after the strike?

Q. After the strike.

A. Altogether, about four times.

Q. When was the last time that he requested you to come back to work? [123]

A. On that Saturday morning in October, I think it was, when he approached the other three fellows.

Q. That would be some time, I believe you said, between the middle and the end of October?

A. That's right.

Q. 1941? A. Yes.

Q. And he asked you altogether about four times to come back to work? A. That's right.

Q. On this last occasion when he asked you to come back to work, whom else did he ask to come back?

A. Don Quinn, Nolan Berteaux and Nick La Caze.

Q. Where was Joe Sardo?

A. He wasn't there.

(Testimony of Vito Cimarusti.)

Q. When he asked you four to come back?

A. He wasn't there.

Q. Who else was there?

A. Just us four fellows, and this witness friend of his that he called over to witness it.

Q. He wasn't a cutter, was he?

A. I don't know who the guy was. I never had seen him before.

Q. What I meant by my question: What cutters of Lettie Lee were there present at that time when Mr. Bothman asked you to [124] come back to work?

A. Nolan Berteaux, Don Quinn and myself.

Q. Three of you?

A. Nick La Caze was there, but he is a presser.

Q. I see. He asked all three of you to come back to work?

A. All four of us.

Q. All four of you? A. Yes.

Q. And none of you went back? A. No.

Q. How did the question of Joe Sardo's coming back to work or not coming back to work come up?

A. Well, we asked if he wanted Louis and Angelo—that is Louis Baliber and Angelo Castella back, and Joe Sardo. And he said so far as they are concerned, two of them were trouble makers and the other fellow he didn't want to have anything to do with.

Q. Who was the other fellow?

A. Joe Sardo.

Q. Did he say why he didn't want to have anything to do with him?

(Testimony of Vito Cimarusti.)

A. He was an ex-convict.

Q. Did Mr. Bothman ever tell you that the only way he would take you back or allow you to come back to work would be if you severed your connection with the union? [125]

A. He told me to come back to work all the time, but he never did say anything like that. It would be understood I would be severed from the union.

Q. But he never said anything like that?

A. He wouldn't have anything to do with the union.

Q. Pardon me?

A. He wouldn't have anything to do with the union, and that's the only way I would go back to work.

Q. How many times did you talk to Lou Swartz about coming back to work? A. Once.

Q. When was that?

A. The night he called me up, in October.

Q. In October?

A. October or November, after that last talk with Mr. Bothman, Lou Swartz called me up.

Q. Now, what did Mr. Swartz have to say about Mr. Bothman during the course of his conversation with you?

A. Mr. Bothman would never sign up with the union, would have nothing to do with them; before he would sign up with the union, he would close his factory, that Lettie Lee would go to Texas, and he would go into something else.

(Testimony of Vito Cimarusti.)

Q. Mr. Swartz never did go out on strike, did he?

A. He was down the first two days of the strike.

Q. Then he went back? [126]

A. Then he went back.

Q. Did Mort Litwin go out on strike?

A. Mort Litwin was down the first two days, and Saturday. He was down Saturday morning.

Q. You said that both of them went out and stayed out two days?

A. Lou was down both the two days. I saw him down on the picket line and up at the Labor Temple both days, or at the cafeteria over there, I mean.

Q. Lou Swartz? A. Yes.

Q. You saw him on the picket line?

A. Not on the picket line, but at the cafeteria and at the Labor Temple.

Q. You never saw him on the picket line?

A. No.

Q. You don't know whether or not he left his work or not?

A. He left the impression. He told us he left, he was with us.

Q. How about Mort Litwin? Did you ever see him on the picket line?

A. Mort Litwin was with us in the cafeteria and at the Labor Temple, and Saturday morning he came to the Labor Temple also.

Q. But you didn't see him in the picket line, did you? [127] A. No.

Q. Now, on these several occasions when Mr.

(Testimony of Vito Cimarusti.)

Bothman asked you to come back to work, he knew, of course, that you had joined the union, didn't he?

A. Yes, he knew it. He saw me on the picket line numerous times.

Mr. Shapiro: That is all.

Redirect Examination

Q. (By Mr. Nicoson) When you were talking about this picket line, in answer to Mr. Shapiro's question a while ago, in the first two days of the strike do you know whether or not any of the cutters of Lettie Lee actually picketed those two days?

A. No, I don't.

Q. You don't know. Did you?

A. I didn't.

Q. You did not. Now, in answer to Mr. Shapiro's questions, I think you testified that in all Mr. Bothman told you to come back to work about four times during the course of the strike, or after the strike had begun. Is that correct?

A. That's right.

Q. Did he ever at any time say to you or indicate to you in any way that it was all right for all six of the cutters to come back to work?

A. No, he didn't. [128]

Q. Did he say anything to the contrary?

A. He wouldn't take the two trouble makers and Joe Sardo back.

Q. Did he say in that connection anything with reference to the union?

A. He wouldn't have anything to do with the union.

(Testimony of Vito Cimarusti.)

Q. Now, in respect to Dorothy Richard, when was it you were laid off in that period? Around about June, or May?

A. I think I was laid off about the last week or the week prior to the last in May. I came back in June.

Q. At that time was Kathryn Lembke working there? A. No, she wasn't.

Q. She wasn't there? A. No.

Q. Dorothy Richard was there?

A. Dorothy Richard was hired two or three days later.

Q. When did Kathryn Lembke leave, if she did?

A. She left between the time I was laid off and the time I came back. I can't tell you.

Q. At the time you were laid off, she was working? A. She was.

Q. Was Dorothy Richard working there then?

A. No.

Q. When you came back to work on June 12th, was Kathryn Lembke there? [129] A. No.

Q. Was Dorothy Richard there? A. No.

Q. When did Dorothy Richard come on, if you know?

A. I think Dorothy came on the following Monday that I came back to work; either that Monday or the one following that.

Q. On your cross examination you testified that the wall or the partition in the cutting room was about as high as the panel in this court room, and the distance between the panel in this court room

(Testimony of Vito Cimarusti.)

to the ceiling was approximately the same as in the factory building. Is that correct?

A. That's right.

Q. Would you say that the distance from the top of the panel to the top of this court room is approximately three feet?

A. It is approximately, yes.

Q. And that the panel, how high would you say that is, approximately?

A. About eight to ten feet.

Q. Now, as I understand your cross examination, you said something about the open end of this room, that there were counters and bins at that open end. Will you describe how those counters and bins are located?

A. Well, there is this one thing that stands as high as the partition. [130]

Q. What is that?

A. It is a bin, a bin like affair. They have threads and things in it.

Q. Have what?

A. Threads and bundles of work.

Q. Supplies?

A. Supplies. So it forms a doorway, like that wall there (indicating) does for the end of the court room. And then it comes in about, I would say, seven feet, and then it goes back towards the east about three or four feet. Then it has this opening. Then there is a counter there. Then there is another partition on the east end, and in front of this partition there is these bins where the materials are, the stocks.

(Testimony of Vito Cimarusti.)

Q. I believe I understood you to testify on cross examination that you were called to work in February 1941 for the company. Is that correct?

A. I was, yes.

Q. Who called you?

A. Lou Swartz

Q. Lou Swartz. Where were you when you were called?

A. My wife took the call. I answered him that night. He left a message for me to get in touch with him by phone.

Q. Did you call him by phone?

A. I called him by phone. [131]

Q. What did you say between yourselves?

A. He wanted to know if I cared to work for Lettie Lee, and I asked him how much he would pay, and he told me. And I told him I had another job, which I would have to give them notification, and I would want about a week's time. He agreed to that. I came in to see him in the meantime; after work I came in to see him, and talked to him. We had a discussion.

Q. By "in to see him", you mean at the factory?

A. In the factory. I talked to him. We talked about 15 minutes, and he told me the fellows liked him and they got along, and he studied me, and he liked me, and he says, "Well, you come in Monday."

Q. As a result of that conversation, you took up your employment with Lettie Lee?

A. That's right.

Mr. Nicoson: That is all.

(Testimony of Vito Cimarusti.)

Mr. Shapiro: Just one or two more questions.

Recross Examination

Q. (By Mr. Shapiro) When this strike was called on July 24th, do you know how many of the employees of Lettie Lee walked out?

Mr. Nicoson: I object to that. It is immaterial.

Trial Examiner Erickson: Overruled.

The Witness: Well, there was all the cutters.

[132]

Q. (By Mr. Shapiro) You mean the six men named in this complaint?

A. The cutters, yes.

Q. Well, you are talking about the six individuals named in the complaint?

A. I am talking about Lou Swartz and Mort Litwin being down the first two days after the 24th.

Q. The six men named in the complaint, and Lou Swartz and Mort Litwin?

A. And Mort Litwin.

Q. And that makes eight? A. Eight. ,

Q. Who else?

A. All the assorters were down. Tony was down, the stock girl.

Q. The stock girl? A. That's right.

Q. Was Sarah down? A. Yes.

Q. Marie Chavez? A. Yes.

Q. Frances Avila? A. That's right.

Q. Saloma Sesma? A. That's right. [133]

Q. Did they return to work, do you know?

A. That's something I didn't know at the time,

(Testimony of Vito Cimarusti.)

no. They didn't return to work the two days I saw them.

Q. Have they returned since? A. Yes.

Q. Did Kathryn Lembke go out?

A. Kathryn Lembke wasn't there.

Q. Did Dorothy Richard go out?

A. I didn't see Dorothy.

Q. Did Eunice Usher go out?

A. She went—she talked to us fellows, and then she went on home.

Q. Has she since returned to work?

A. I don't know. I haven't seen her.

Q. As a matter of fact, you know she has returned to work?

A. I haven't seen her. I can't say yes or no.

Q. All right. Who else out of all of the employees of Lettie Lee responded to that call for a strike?

A. Well, I was interested in the cutters and that's all. I paid more attention to that. Some of the operators were down, but I didn't know who they were.

Q. Do you know how many, by number, went out? A. No, I don't.

Q. Isn't it true, as a matter of fact, that out of the total employees of Lettie Lee, only approximately 20 walked [134] out?

Mr. Nicoson: I object to that. He has testified he didn't know how many went out.

Mr. Shapiro: This is cross examination.

(Testimony of Vito Cimarusti.)

Trial Examiner Erickson: He may answer, if he knows.

The Witness: I don't know.

Mr. Nicoson: It is repetitious. He has been over this question five or six times.

Q. (By Mr. Shapiro) You don't know?

A. I don't know.

Mr. Shapiro: All right. That is all.

Mr. Nicoson: That is all.

(Witness excused.)

Mr. Nicoson: May we have our noon recess now?

Trial Examiner Erickson: We will recess until 1:30 for lunch.

(Whereupon at 12:15 o'clock p. m. a recess was taken until 1:30 o'clock p. m. of the same day.) [135]

Afternoon Session

(The hearing was reconvened at 1:30 o'clock p. m.)

Trial Examiner Erickson: The proceeding will come to order.

Mr. Nicoson: Will you mark this, please?

(Thereupon the document referred to was marked as Board's Exhibit 6, for identification.)

Mr. Nicoson: At this time I offer in evidence the paper entitled "Stipulation," which, for the purpose of identification, has been marked Board's Exhibit 6. It is a stipulation concerning the com-

pany's business and its relation to commerce. I now offer it for the record.

Trial Examiner Erickson: It will be received.

(Thereupon the document heretofore marked Board's Exhibit 6, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 6

United States of America

Before the National Labor Relations Board

21st Region

Case No. XXI-C-1807

In the Matter of

LETTIE LEE, INC.

and

INTERNATIONAL LADIES' GARMENT
WORKERS UNION, CUTTERS LOCAL
NO. 84, A. F. L.

STIPULATION

It Is Hereby Stipulated and Agreed by and between Lettie Lee, Inc., through its undersigned representative and Charles M. Ryan, attorney, National Labor Relations Board, as follows:

1. Lettie Lee, Inc. is and at all times since January 19, 1939 has been a corporation existing under and by virtue of the laws of the State of California.
2. The officers of Lettie Lee, Inc. are:

Lettie Lee	President
Mrs. R. H. Thain	Vice President
Sam Bothman	Secretary-Treasurer

3. Lettie Lee, Inc. is engaged in the manufacture of dresses at its place of business located at 719 S. Los Angeles Street, in Los Angeles, California.

4. Lettie Lee, Inc., in the conduct and operation of its business, uses the following kinds of material, namely: rayons, threads, buttons, buckles, and zippers.

5. Lettie Lee, Inc., during the calendar year ending March 31, 1940 purchased materials of the kind set forth in Paragraph 4 above in the amount of \$151,000, of which amount \$136,000 represents purchases from sources located outside the State of California.

6. During the calendar year ending December 31, 1940, Lettie Lee, Inc. made sales of its products amounting to \$397,000. Of the aforementioned amount \$250,000 represents sales made to purchasers located outside the State of California.

7. Lettie Lee, Inc. concedes that it is engaged in business in and affecting interstate commerce within the meaning of the National Labor Relations Act.

LETTIE LEE, INC.

By SAM BOTHMAN

CHARLES M. RYAN

Attorney National Labor Re-
lations Board

Dated:

Mr. Nicoson: Harry Scott.

HARRY SCOTT,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Nicoson) State your name for the record. A. Harry Scott.

Q. Where do you live, Mr. Scott?

A. 706 North St. Andrews Place. [136]

Q. In the City of Los Angeles?

A. Los Angeles, that's right.

Q. What is your business or occupation?

A. At the present time I am technical consultant for the National Youth Administration for the State of California.

Q. What was your business or occupation during the months of May, June, July, August and September, 1941?

A. Organizer and cutters' representative of the International Ladies' Garment Workers' Union.

Q. What were the duties of your office?

A. Well, complete charge of the cutting department, take care of their complaints and organize the unorganized cutters that were in the market.

Mr. Shapiro: May I interrupt, Mr. Nicoson?

Mr. Nicoson: Yes.

Mr. Shapiro: At this time I am going to renew the motion I made this morning with reference to

(Testimony of Harry Scott.)

the exclusion of witnesses, your Honor. Technically, my motion might not apply with as much force with respect to this witness as to the employees of Lettie Lee, but I think if an order is made, and I think it should be made, I think it should apply to all witnesses who may testify in this action.

With respect to Mr. Sokol's remark that the harm has been done, because one of the witnesses had practically completed his testimony, that doesn't necessarily follow at all. [137] There are a great number of witnesses yet to come, I believe, and I don't believe the witnesses should sit in the court room and be in a position where they can hear the testimony repeated and repeated by one witness after the other.

Trial Examiner Erickson: Are there any witnesses here who are not named by the complaint as complainants?

Mr. Nicoson: What was that question?

Trial Examiner Erickson: Are there any witnesses in the court room now who are not named by the complaint as complainants, who are not named as 8 (3)'s?

Mr. Nicoson: There are two here.

Trial Examiner Erickson: What relation to the testimony—I mean, is there any relationship to the testimony that they will give to the testimony that the other witnesses in the court room will give?

Mr. Nicoson: Yes. I will say generally they will testify as to the operations of the union, which is

(Testimony of Harry Scott.)

not within the knowledge and, by its very nature, couldn't be within the knowledge of the complainant witnesses, if we may so term them.

Trial Examiner Erickson: You mean they are the only two witnesses except for the complaining witnesses?

Mr. Nicoson: That's right.

Trial Examiner Erickson: The motion is denied.

Mr. Nicoson: I suppose I should say three. I didn't [138] count the witness on the stand, when I said two.

Trial Examiner Erickson: Very well. Proceed.

Mr. Nicoson: May I have the last question and answer read, please?

(The record was read.)

Q. (By Mr. Nicoson) Pursuant to your duties to organize the unorganized, did you have any connection with any of the employees of Lettie Lee?

A. I did.

Q. When did that connection begin?

A. Well, some time in the early part of—the latter part of April or the early part of May.

Q. What employees were you interested in?

A. Concerned only about the cutters.

Q. The cutters. Will you state what was done at that time?

A. Well, on or about that time I called in a group of cutters that formed the organization committee, and assigned them to the 719 building. Then I assigned a special few to contact the boys of the Lettie Lee shop.

(Testimony of Harry Scott.)

Q. What is the 719 building?

A. That is 719 Los Angeles Street, where the firm of Lettie Lee has its premises.

Q. Proceed, please.

A. Well, this went on for some time, between the boys contacting these fellows and giving out leaflets, and they [139] started their general work of attempting to organize the cutters. Some time about, oh, the beginning of June—no, the beginning of July, I had been standing in front of the building, and one of the boys that was doing the organizing informed me that the cutters of Lettie Lee were going around to the restaurant around the corner, the Merchants Exchange restaurant, and that one or two, not mentioning any of the names, would like to have me come back and talk to them.

I went around the corner there, and it seemed they were very much in a hurry to get through their lunch, they didn't have much time there.

Q. Whom did you see there?

A. Oh, there was—let's see—there was Vito.

Q. Is that Cimarusti?

A. Cimarusti, Joe Sardo, Nolan—

Q. Nolan Berteaux?

A. That's right. Don Quinn, and Angelo. There was five of them there.

Q. Angelo Castella?

A. Yes. Oh, there was one more there, Lou Baliber. Lou Baliber came in in a few minutes, a few minutes later, because he came in to inform the boys it was time to go back to work.

(Testimony of Harry Scott.)

Q. You had a conversation there?

A. I had a very short conversation with them, wanting to [140] find out——

Q. What did you say to them?

A. I asked them——

Mr. Shapiro: Just a moment. I object to that. It is hearsay and not binding on the defendant in this case.

Trial Examiner Erickson: Overruled.

The Witness: I asked them what their feelings were towards the union, and how they felt about becoming members of the union. Well, none of them at that particular moment wanted to commit themselves, and I can't remember specifically who it was who said it, but the boys felt in general that since all of them weren't there at the present moment, they didn't want to commit themselves.

However, they said they would let me know at a later date, that I was to have our boys keep in constant touch with them. I had one in particular by the name of Lee Shapiro, and I had another one, Wexler, and one that is sitting here now, the man that took my place in the office there, Haas. They kept in constant touch with them.

And then on the 21st of July I was informed by Lee Shapiro that the boys were coming up to see me. It happened just right at the tail end of our organization work, when we didn't know just how soon the strike was going to be called, and everybody was up on their toes and busy. And the boys came in to see me and wanted to ask a few questions, [141] and

(Testimony of Harry Scott.)

wanted to know what the possibilities were in case there was a failure to organize the rest of the workers in the shop, whether they had some security, since they represented the majority of the cutters in the cutting department.

I informed them on previous cases that I have had, that I have had cases where I did represent the cutters even though no other members in the shop had been members of the union. I cited the cases to them, and informed them of one case in particular where the National Labor Relations Board, and the Examiner that walked out here just now, Mr. Yager, had handled the case, and it was agreed in the Chic Lingerie, where there was only four cutters involved, although there were six cutters employed in the department, including miscellaneous workers such as slopers, and assorters, and the like of that——

Mr. Shapiro: Pardon me. Is this a part of the conversation.

The Witness: Yes, I gave this.

Mr. Shapiro: You told these boys all this?

The Witness: That's right.

Mr. Shapiro: Excuse the interruption.

The Witness: This is the information they came up there for. They wanted to know where they stood, and I wanted to explain to them and gave them the understanding that, at least, I could assure them of at least that much security, that [142] there was a great possibility of our getting the thing over, because of the precedents that had been set.

(Testimony of Harry Scott.)

Q. (By Mr. Nicoson) You said you had some discussion about a majority. What was that discussion?

Mr. Shapiro: May it be stipulated that I have a continuing objection to this line of testimony on the ground it is hearsay and not binding on the defendant?

Trial Examiner Erickson: It will not be stipulated, but I will grant that.

Mr. Shapiro: Thank you.

The Witness: Your question again?

Mr. Nicoson: Read the question, please.

(The question was read.)

The Witness: I asked the boys how many cutters were employed in the shop, and I can't remember as to whether they said eight or nine, and since there were six at that particular time in front of me, I come to the conclusion that they did represent the majority of the cutters at that time in the shop.

Q. (By Mr. Nicoson) Well, did the six—

A. Pardon me. By the way, while they were standing there, I asked each of the fellows that were there what was their specific job, because there is such a thing as terming somebody as a cutter that is not a cutter, and I wanted to go back into the background, and when I got through [143] questioning, I was convinced they were all full-fledged cutters.

Q. You mean by that that they were experienced cutters? A. That's right.

Q. Did they at that time sign cards?

A. Yes, sir.

(Testimony of Harry Scott.)

Q. All six of them?

A. That's right. No, one had signed a card—oh, one had signed a card some time in May. That was Joe Sardo had signed a card some time in May, and Lou Baliber didn't have to sign a card because he had already been a member of the union.

Q. Could they both have signed new cards there at that time?

A. Well, I wouldn't commit myself on saying yes.

Q. It is possible?

A. It is possible that they could have.

Q. Did you get an opportunity at that time to finish your discussion with these men?

A. No, I didn't. I was very busy at the time, and I told them I would like to have more time with them, in case they had any further questions to ask. But I did ask them of their willingness of joining the union, and whether this—I wanted to find out whether it was being done because of some force or some pressure, to know they come up voluntarily, of their own free will, and they stated they felt the [144] security of their jobs could be more depended on if they had an organization behind them.

Q. Well, did you arrange for a further meeting?

A. Then I arranged with them a further meeting. I arranged the meeting for not the next day, but the day after that, Wednesday, the 23rd. I arranged a meeting the 23rd at the Alexandria Hotel, arranged a dinner there.

Q. Before you get to that, did you do anything about the Lettie Lee situation on the following day?

(Testimony of Harry Scott.)

A. Yes. On the 22nd I got in touch with our attorney, Mr. Sokol, and told him the entire story, and asked him to get in touch with the firm of Lettie Lee and telling them who was up there to sign the cards, and asking him to go ahead and negotiate with the firm on behalf of these cutters.

He did that that day. I told him that day and called him back later on in the afternoon and asked him how he had made out. He said, "No luck," and that he left a call, and no luck.

I did the same on the 23rd. I called him, and, in fact, he called himself to tell me that he hadn't had any luck in getting in touch with the firm,

Q. That is Sokol you are referring to?

A. That's right.

Q. Now, on the 23rd you had a meeting, I understand, with the men? [145]

A. That's right, at the Alexandria Hotel.

Q. What transpired? First, tell us who was present?

A. At the meeting, Lou Baliber, Vito——

Q. That is Cimarusti?

A. ——Cimarusti, Angelo Castella, Joe Sardo, Don Quinn, Nolan Berteaux.

Q. Was anyone else present?

A. Yes, Lee Shapiro.

Q. Anyone else? A. No.

Q. What transpired at this meeting?

A. Well, more or less of a broadening of the questions that took place in my office. They wanted to know just what were the possibilities of obtaining

(Testimony of Harry Scott.)

a contract in case anybody else did not come down out of the shop outside of themselves. And I went on to explain the precedents that had been established in the market, and that I thought that the chances were very good, since we represented a majority of the cutters in that place there.

Q. What time did this dinner meeting take place?

A. Oh, between 5:00 and 6:15.

Q. Would you say it was over by 6:15?

A. Yes, sir.

Q. After the dinner was over, did you do anything further in connection with it? [146]

A. Oh, yes. I had to get back to the union to report to the strike committee as to what took place here.

Q. "Here," what do you mean by "here"?

A. What took place at that meeting, I had to inform them.

Q. And did you?

A. I did so inform them just what took place there.

Q. What did you inform the strike committee?

A. That, according to the testimony of the boys there, that the majority of the cutters were in favor of joining the union or had joined the union, and I showed them the cards they had signed on Monday, and informed them of the previous membership of Baliber and the signing of the card of the other man, and of their intentions of sticking by the union.

Q. Was any action taken at that time?

A. No, not at that particular moment. At that

(Testimony of Harry Scott.)

moment when I made my report, there was no action taken, because none of us knew just what action would be taken in the immediate future.

Q. Was action subsequently taken?

A. Yes, that night.

Q. Were you informed of that.

A. Yes, by phone at the house that night. The strike committee had been made, and after the strike committee had been made, a committee that superseded the strike committee, it was the international officers of our union, who were [147] to determine—

Q. Who were they?

A. George Wishnak, Louis Levy and Rose Pissota. They are our international representatives, and they were in charge of the—well, how would I put this now—they were to determine the exact hour that a strike was to be called. Nobody in the union other than them knew of the exact hour the strike was to be called. And some time before midnight of the 23rd, I can't exactly remember the time, I was informed by telephone by Miss Pissota that the strike was to be called the following morning, and we were to be out as close to 6:00 o'clock as we possibly can, out in the street, to inform the workers as to where to report, those workers that come down on strike.

Q. Was there anything said in connection with Lettie Lee?

A. Yes. At that time Miss Pissota informed me then that we were going to include the Lettie

(Testimony of Harry Scott.)

Lee cutters, and other cutters that intended to come down on strike.

Q. Did she say why the Lettie Lee cutters were included?

A. Because we felt we represented a majority of the cutters in that shop.

Q. Any other reason?

A. Well, not that I can think of right now.

Q. Now, how long were you connected with the Cutters Union?

A. Since May of 1932. Yes, since May of 1932. Oh, as [148] business representative of the Cutters?

Q. Yes.

A. No, since January of 1940 as organizer and manager of the cutting department.

Q. You belong to the Cutters Local, don't you?

A. Yes, sir.

Q. How long have you belonged to the Cutters Local? A. Since August of 1932.

Q. Did you ever work in a shop yourself?

A. Yes, sir.

Q. How long have you worked in the shops?

A. About five or six years.

Q. As a cutter? A. Yes, sir.

Q. Do you have any knowledge or experience with what is termed as assorters?

A. Oh, yes, sir.

Q. Do you know what assorters do?

A. Yes, sir.

Q. Are assorters taken into your organization?

A. No, sir.

(Testimony of Harry Scott.)

Q. Is there anything to prevent them from becoming members of the Cutters Local?

A. Yes, their ability to cut.

Q. Does your organization recognize them as cutters? [149]

A. No, sir.

Q. Now, there has been some testimony here concerning an employee who performs what they call a sloping operation. Do employees who perform sloping operations,—are they taken into the cutters union?

A. No, sir.

Q. And why not?

A. Because of their lack of ability to do anything other than that.

Q. You don't recognize them as cutters?

A. No, sir.

Q. I think there has been some testimony about trimmers. Are trimmers taken into your organization?

A. At one time, when we were taking in assistant cutters, we attempted to consider trimmers, but that was overruled and trimmers are not classified as properly qualified to be cutters.

Q. And that is the situation at the present time?

A. Yes.

Q. Was that the situation in March, April, May, June, July, August and September of last year?

A. From the information I got from the boys, yes, sir.

Q. Now, in your capacity as organizer, have you in your experience organized, signed and procured

(Testimony of Harry Scott.)

a contract for cutters with the rest of the plant not being organized? [150] A. I have.

Q. How many situations like that do you know of?

A. Well, to go back as far as 1934, with the Paramount Dress Company, right in the same building as the Lettie Lee Shop. Back in 1934 we represented just the cutting department.

Q. Did you have a contract?

A. Yes, obtained a contract and the firm became a member of the collective agreement with the Association, even though we just represented nobody else but the cutting department out of a shop of possibly 75 other workers.

Q. Anyone else?

A. Yes, sir. During the course of the strike, Classy Lass, a shop now at 746 South Los Angeles Street, that is the address of the firm, there just the cutting department, we represented nobody else in there, and we signed an agreement for a contract with an understanding that I represented the cutters in that department and negotiated on behalf of the cutters on wages and hours and who is to be worked.

Q. Do you have any other plants in that category?

A. Yes. As I started to tell you before, the Chic Lingerie.

Q. That is the one you spoke of before?

A. Yes.

(Testimony of Harry Scott.)

Trial Examiner Erickson: How do you spell that?

The Witness: C-h-i-c.

Q. By Mr. Nicoson): Anyone else? [151]

A. Yes, the Meena Neglige.

Q. In all these plants you just mentioned, you secured contracts for cutters?

A. I secured contracts for cutters in three, and at the Meena Neglige there was no written contract there, but negotiations were being carried on at the time I left, that was November the 1st, but I have——

Q. On what basis? A. On what basis?

Q. Yes.

A. On wages and hours in behalf of the cutting department, and the firm had granted, had recognized me as the representative.

Q. Of what?

A. Of the cutting department, and had granted the cutters an increase of \$2.50 because of negotiations.

Mr. Nicoson: That is all. You may cross examine.

Cross Examination

By Mr. Shapiro:

Q. Do you know of any other local manufacturers where the cutters only have been signed, to the exclusion of the rest of the production employees?

A. Not that I know of. Not that I can recall.

(Testimony of Harry Scott.)

Q. Now, Chic Lingerie, I take it, manufactures lingerie; is that correct?

A. That's correct. Lingerie and sports wear.

[152]

Q. And Meena Negligees, I take it, manufactures negligees?

A. Bathrobes, negligees, and sportswear. The trade name does not necessarily state the type of work that they make there.

Q. And Classy Lass, what do they manufacture?

A. Dresses, somewhat similar to the type that you make, that the Lettie Lee makes; a cheaper line though.

Q. Now, you have referred to a Lee or Leo Shapiro, and my name is Leo Shapiro. We are two different persons?

A. That's right.

Mr. Shapiro: That is for the record.

Mr. Nicoson: I would even stipulate to that, Mr. Shapiro.

Mr. Shapiro: Well, maybe it was a poor choice of words.

Q. (By Mr. Shapiro): How do you know that Classy Lass makes dresses the same as Lettie Lee does?

A. I say the same type of a dress. The same type of a dress, on the same order.

Q. Do you know in what price range?

A. Much lower. They make four and six—

Q. \$4 and \$6 dresses? A. Yes.

(Testimony of Harry Scott.)

Q. Do you know what the Lettie Lee price range is?

A. Well, I wouldn't say that I know positively, but from the information I have received from the market, it is from [153] \$10. \$10 up.

Q. In other words, they get about twice as much for their dresses as Classy Lass; that is right, isn't it?

A. Yes, that's right.

Q. How about the Paramount Dress Company?

A. A much higher priced line.

Q. A higher priced line?

A. That's right.

Q. Now, with the exception of these four concerns, Paramount, Classy Lass, Chic Lingerie and Meena Neglige, do you know of any other manufacturers in the City of Los Angeles where your local represents the cutters and the rest of the production workers are not organized?

A. No, I don't. Not to my recollection, I don't know.

Q. How many dress manufacturers are there in the City of Los Angeles, comparable to Lettie Lee?

A. Oh, I would be in no position to give you any exact answer.

Q. Would you say that there are between 25 and 50?

Mr. Sokol: He said he didn't know.

Mr. Shapiro: He is an organizer in this line. He ought to know something about the subject.

The Witness: Well, may I broaden that answer?

Q. (By Mr. Shapiro): Surely.

(Testimony of Harry Scott.)

A. I haven't been able to get into all the rat holes yet. I [154] haven't been able to get into all the corners and find out where they are.

Q. Whom do you refer to, when you refer to rat holes?

A. The people who are hiding behind corners, who are supposed to be in the business, but on the surface they are not. They are considered manufacturers too. Their dresses are coming into the market, and we don't know where they are coming from.

Q. Will you tell me, Mr. Shaw——

A. Scott.

Q. Pardon me. Mr. Scott, will you tell me how many dress manufacturers there are in the city of Los Angeles, approximately?

A. I don't know. There could be anywhere from 25 to 50, as you say, but I wouldn't be positive about it.

Q. Well, there are many times four, aren't there? A. Oh, yes.

Q. Four is a very small percentage?

A. Yes.

Q. Of the total number of dress manufacturers in this city? Isn't that true?

A. That's right.

Q. Now, on what date was your agreement with Classy Lass signed?

A. Oh, the exact date I couldn't say, but it was some time [155] in October.

Q. Of this year? A. That's right.

(Testimony of Harry Scott.)

Mr. Sokol: You mean 1941?

The Witness: Yes, 1941.

Q. (By Mr. Shapiro): How about Chic Lingerie?

A. That happened in the early part of 1941. Some time in April.

Q. How about Meena Negligee?

A. Meena Negligee?

Q. Yes.

A. The negotiations with that firm was going on up until November 1st, when I severed my relationship with the union and went to work for the Government.

Q. You don't know whether they have since reached an agreement or not?

A. No, I really couldn't say, but I do know the negotiations I carried on with the firm, and because of the fact I was their representative, and he recognized me as such, I obtained an increase of \$2.50 for each of the cutters in that place there.

Q. What is the situation in the plants of the other dress manufacturers? What is the reason, if you can tell me, that you don't represent the cutters there? A. What other plants? [156]

Mr. Sokol: That is objected to as calling for the conclusion of the witness.

Trial Examiner Erickson: Overruled.

The Witness: What other plants?

Mr. Shapiro: The other dress manufacturers in this town.

Mr. Sokol: I object.

(Testimony of Harry Scott.)

Trial Examiner Erickson: Overruled.

Mr. Nicoson: Let me object also. That is assuming something not in evidence, whether he represents cutters in other plants. It is immaterial anyway.

Trial Examiner Erickson: Let him answer. I would like to know what the background is.

The Witness: What was the question?

Trial Examiner Erickson: Read the question, please.

(The question referred to was read.)

The Witness: I don't know what plants you are talking about. I don't know any specific plant you are talking about. Wherever our union has agreements, we represent cutters there throughout the better part of the industry, the dress industry, cloak industry, sportswear industry. I can't understand the question.

Q. (By Mr. Shapiro): Do the cutters have a separate agreement in any other plants, dress manufacturing plants of the city of Los Angeles, other than these four that you have [157] testified about?

A. Well, let me—yes. Let me explain that to this extent, that in the joint agreement that we have, we have separate arrangements for the cutting departments in the joint agreement, specifying the type of arrangements that is to be made for the cutting departments, and in signing those agreements, whether it be jointly or singly, the cutters' representative is there to see that these particular

(Testimony of Harry Scott.)

clauses are adhered to, or gone over with, and agreed to.

Q. Here is what I want to find out, Mr. Scott: You said that there were probably between 25 and 50 dress manufacturers in the city of Los Angeles.

A. I am taking your word for it. I don't know, I said.

Q. Let's assume there are between 25 and 50 dress manufacturers in the city of Los Angeles. You have contracts with the cutters with only four of those, according to your testimony.

Mr. Nicoson: He didn't say that.

The Witness: No, I didn't say that.

Mr. Nicoson: He didn't say that. He didn't testify anything like that.

Trial Examiner Erickson: Proceed.

Mr. Shapiro: Then I must have misunderstood the witness.

Q. (By Mr. Shapiro): What is your testimony?

A. My testimony is that—I am giving you testimony, [158] informing you that I have had contracts with firms, and I have negotiated with firms and have had contracts with firms just in cutting departments alone. I believe that we represent about 80 per cent of the cutters in the market, so they must be represented, the majority must be represented in the 25 or 50 that you mentioned, as far as the rest of the shops are concerned. The only shops we don't have much representation in is that 719 building, and even so, in that build-

(Testimony of Harry Scott.)

ing we have a representation of the majority of the cloak shops there.

Q. Then let me ask you this question: How many shops are there in the city of Los Angeles manufacturing dresses, where you do not represent the cutters?

A. I couldn't say that. I don't know. That is why I was there as an organizer, to go out and find out. That is a hard job to find out. We could never find out all of them, or even approximately.

Q. You were an organizer since January of 1940, weren't you? A. Yes.

Q. And during that period of a year, or more than a year, weren't you able to find out approximately what percentage of the dress manufacturers in Los Angeles were organized——

A. No. It would take——

Q. ——as far as the cutters were concerned?

A. Well, no. It would take more than Mr. Scott and four [159] other Mr. Scotts put together to do that.

Q. Take the 719 building. A. Yes.

Q. Do you know how many dress manufacturers there are in that building?

Mr. Sokol: I think this is going far beyond the reach of materiality, and I object.

Trial Examiner Erickson: Overruled.

Mr. Sokol: It is very hypothetical.

Trial Examiner Erickson: Overruled.

The Witness: Well, I wouldn't—about eight or ten in the building, a rough guess, just a guess.

(Testimony of Harry Scott.)

Q. (By Mr. Shapiro): Eight or ten?

A. I didn't come down here with any data on the thing. Just about eight or ten, I would say.

Q. All right. About eight or ten dress manufacturers, you think, in the 719 building?

A. Yes.

Q. How many of those manufacturers, other than Lettie Lee, employ cutters that are not members of your local?

A. Oh, that I can think of, there is Twentieth Century. Oh, they are members of our local, but no recognition, because they don't represent a majority.

Twentieth Century, Markowitz, Bettermade, a new firm there headed by Jean May, I don't know the name of it. [160] About four, that I can think of.

Q. Raab & Harmell?

A. Raab & Harmell, yes, that is another one.

Q. You say the cutters are members of your union, but they do not represent a majority in these plants? A. Not in all of them, no.

Q. A majority of what?

A. A majority of the cutters in Twentieth Century, William Markowitz, Bettermade. Raab & Harmell, we had the two cutters employed in the shop out on strike, and I think there was another shop there. I just can't think of the name.

Q. Now, how do you determine, Mr. Scott, whether or not a particular unit is the appropri-

(Testimony of Harry Scott.)

ate unit, in so far as your organizing of that unit is concerned?

A. By the ability of the person who is working in that department, that unit.

Q. Do you have any rules that guide you in determining whether or not an employee who renders a particular type of service or work—

A. If there is a question—

Q. (Continuing): —is qualified to membership in your local?

A. If there is a question of doubt in my mind when we question him before the membership committee, because of his background, if we don't know anything about his background, we give him a test. [161]

Q. Now, is it your testimony, Mr. Scott, that this girl—I will have her name in a minute—Eunice, who cuts with a shears, and sometimes with the power cutter, and follows a marker or a pattern laid out for her, that she is not a cutter?

A. Yes. She is not a cutter, in my mind. No cutter would classify her as a cutter, as that work usually, in the majority of the shops, is left to a shipping boy or a stock boy. It is very unimportant work.

Q. Is it possible for a woman to be a cutter?

A. Yes.

Q. And thereby become a member in your local?

A. Yes, we may have them.

Q. You may. Have you had them?

(Testimony of Harry Scott.)

A. We had two of them, but because of the——

Mr. Sokol: Well, that is all he wanted. That is the question.

The Witness: We had two.

Q. (By Mr. Shapiro): Go on and explain what happened to the two you had.

Mr. Sokol: That is objected to.

The Witness: They are still members of the union.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro): What is the total membership in your local? [162]

A. Well,——

Mr. Sokol: Just a moment. That is objected to.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro): Isn't it a fact that the services performed by this young lady, Eunice, requires more skill and more ability, by reason of the type of material that she works on and the fact that it has been pleated, than the work required of a person doing the ordinary cutting operations?

A. No, sir. No, the salary paid to that girl would determine that those——

Q. Well, now, do you take into consideration the fact, in admitting persons to membership in your union, that they may be performing a service that is directly related to the work performed by the cutters?

A. Not in the Cutters Local. We send them over to our miscellaneous department, where they are classified as a bundler or an assorter, or a general

(Testimony of Harry Scott.)

hand in the shop; not classified as a cutter. No, we wouldn't accept them in Local 84.

Q. How many cutters in the employ of Lettie Lee does your union represent?

Mr. Sokol: As of what date?

Q. (By Mr. Shapiro): As of July 24, 1941.

Mr. Nicoson: I object to that, unless he knows.

[163]

Trial Examiner Erickson: If he knows, he may answer.

The Witness: Well, I couldn't say right now offhand. I have been away, as I told you, since November 1st and my mind has been chuck full of a lot of other things other than this.

Q. (By Mr. Shapiro): You are no longer connected with the union in any capacity?

A. Oh, yes, I am a member of the union.

Q. You are not an official?

A. Not an official.

Q. Or an officer of it? A. No.

Q. Not in its employ? A. That's right.

Q. Were you an organizer prior to 1940?

A. Business agent, yes, and represented the dress division.

Q. Was that limited only to the Cutters Local?

A. No, sir. At that time I took in the entire scope, everybody that was employed in the dress departments.

Q. That is all. Oh, excuse me, one further question here.

You say that in this conversation of July 23rd,

(Testimony of Harry Scott.)

the prospective members questioned you as to what protection they would have in the event that they were a majority of the cutters, but that you were not able to get a majority of the other production employees in the plant, and you [164] cited them precedents you testified. What precedents did you cite?

A. Chic Lingerie and the Paramount Dress.

Q. Those were the two precedents you cited?

A. That's right.

Q. When you say that those were precedents, you mean cases that had gone to hearing before the Board?

A. No. The Paramount case went to an arbitration board, but it never came to no climax there. The firm itself recognized that we represented the majority, and consented and became a member of the association, without coming to any conclusions at any hearing. But in the Chic Lingerie case, the Chic Lingerie never reached a hearing neither. Through the negotiations of the representative of the National Labor Relations Board and the member of the firm, they ironed this thing out and come to a conclusion, the firm admitting that since we represented the majority of the workers—of the cutters in the cutting department, they will accept and recognize me as their representative.

Q. You didn't give them any precedents of cases that had actually gone to a hearing—

A. No.

Q. Before the National Labor Relations Board?

(Testimony of Harry Scott.)

A. No, just told them the story as I told it to you.

Q. As a matter of fact, you don't know of any such cases, [165] do you?

Mr. Sokol: Just a minute. I will give you some.

The Witness: I don't know of them personally, but I know of them back east, in Boston.

Mr. Shapiro: That is all.

Redirect Examination

By Mr. Nicoson:

Q. Do you know, Mr. Scott, if there was any attempt made by the Cutters Local to organize anyone else but the cutters in Lettie Lee?

A. Oh, yes, there was.

Q. There was. The Cutters Local made an attempt to organize the rest of Lettie Lee; is that right?

A. No. I beg your pardon.

Q. I thought you misunderstood my question.

A. I beg your pardon.

Mr. Nicoson: Will you read my question again, Miss Reporter, so that the witness may understand just what it was?

(The question referred to was read as follows: "Q. Do you know, Mr. Scott, if there was any attempt made by the Cutters Local to organize anyone else but the cutters in Lettie Lee?")

A. No, nobody else but the cutters in Lettie Lee.

Mr. Nicoson: That is all.

(Testimony of Harry Scott.)

Recross Examination

By Mr. Shapiro:

Q. Was there an attempt made by any other [166] local of the same union to organize anyone else at Lettie Lee, other than the cutters?

Mr. Nicoson: We object to the words "the same union." I don't know what he refers to.

Mr. Shapiro: Of the union involved in this proceeding.

Mr. Nicoson: The Cutters?

Mr. Shapiro: No, the A. F. of L.

Trial Examiner Erickson: Reframe your question, so that it will be understood.

Q. (By Mr. Shapiro): Do you know whether or not there was any effort made by the International Ladies' Garment Workers' Union to sign any of the employees of Lettie Lee other than the cutters?

A. Only hearsay. Yes, I know of attempts by representatives of the dress department.

Q. Do you know whether or not any of the members of Cutters Local attempted to sign any of the other employees of Lettie Lee?

A. Well, I wouldn't know, because I gave them no such instructions, unless they were made by somebody else and asked to visit somebody. I wouldn't know.

Q. What other production employees of Lettie Lee did the International Ladies' Garment Workers' Union attempt to sign?

(Testimony of Harry Scott.)

Mr. Nicoson: I object to that, unless he specifies the division. He is using a broad term, all inclusive, to [167] confuse the witness and confuse the record, when this is a Cutters Local proceeding and there are no other locals in the I.L.G.W.U. here involved.

Trial Examiner Erickson: He stated he doesn't know except by hearsay. Do you have any concrete information on that?

The Witness: No, sir.

Q. (By Mr. Shapiro): Then you know nothing about the activities of the International Ladies' Garment Workers' Union, except in so far as the Cutters are concerned?

A. At that particular time I was very much concerned with the responsibilities that were assigned to me.

Q. Do you know whether or not any attempt was made to organize the operators?

A. Oh, yes, I told you.

Mr. Sokol: That has been asked and answered.

Q. (By Mr. Shapiro): How about the pressers?

Mr. Sokol: That is objected to.

Mr. Nicoson: We object, unless he specifies who was doing the organizing.

Trial Examiner Erickson: If he has any knowledge on it, let him answer.

The Witness: Well, I believe that the intention was to organize everybody employed in the shop

(Testimony of Harry Scott.)

by the Joint Board, but that was none of my concern. [168]

Q. (By Mr. Shapiro): But that was the intention; is that correct? A. I believe so.

Q. That was the object to be attained, if possible?

A. To organize every worker in the market. That was the object of the Joint Board of the International Ladies' Garment Workers' Union, to organize every worker in the market, whether they—you asked me a question—whether they intended to concentrate on this particular thing here or not, I don't know what their intentions were, but my intention was to organize the cutters of the Lettie Lee shop.

Q. With respect to the Lettie Lee shop, was it the intention of the International Ladies' Garment Workers' Union to organize all of the employees in that shop, if possible? A. You might—

Mr. Nicoson: I object. There is no showing this witness knew anything about that.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro): None of the workers in Lettie Lee were organized except the cutters, were they? A. I don't know.

Mr. Nicoson: I object to that.

Trial Examiner Erickson: Sustained.

Mr. Shapiro: That is all.

Mr. Nicoson: That is all. [169]

Trial Examiner Erickson: Step down.

(Witness excused.)

Mr. Nicoson: George Wishnak.

GEORGE WISHNAK,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson:

Q. State your name, please, for the record.

A. George Wishnak, W-i-s-h-n-a-k.

Q. Where do you live, sir?

A. 832 South Oxford.

Q. Is that in the City of Los Angeles?

A. Yes, sir.

Q. What is your business or occupation?

A. I am an organizer for the I.L.G.W.U., that is, the International Ladies' Garment Workers' Union.

Q. Any particular division of it?

A. The dress department. I have charge of the dress department.

Q. Have you ever had any connection with the Cutters?

A. I have been organizing the workers of the trade for the last 40 odd years, and I have had connections with all the different crafts in the industry.

[170]

Q. Are you acquainted—or, have you for those 40 years been an organizer exclusively?

A. Part of the time I worked in a factory. Most of the time I did organizing work.

(Testimony of George Wishnak.)

Q. Have you during that time been a member of any labor organizations?

A. Yes, sir, the I.L.G.W.U.

Q. What was the first organization that you belonged to?

A. The United Garment Workers of America.

Q. How far back does that organization go?

A. During the Spanish-American War, when we were making uniforms for the Army.

Q. Have you since that time always been a member of a labor organization? A. Yes, sir.

Q. Back in the Spanish-American War period, what position or job did you hold?

A. Working in a factory.

Q. As what? A. As an operator.

Q. As an operator?

A. And a cutter at one time.

Q. A cutter at one time. When did you begin as a cutter? A. 1896.

Q. Are you acquainted, Mr. Wishnak, with the history of [171] the Cutters, as a labor organization, from 1896 to the present time?

A. Up till about 1910, the only craft that was organized——

Q. Will you repeat for us what the history was from 1896 to 1910?

A. If you give me a chance, I will.

Mr. Shapiro: If the Court please, I don't believe this is proper testimony. Is this man being called as an expert on the history of union labor, or what is the purpose of this?

(Testimony of George Wishnak.)

Mr. Nicoson: They have denied in their answer that the Cutters are a proper unit. I propose to prove they are and have been since 1896.

Trial Examiner Erickson: The objection is overruled.

The Witness: The first craft that was organized in the needle trade were the cutters. They were considered the skilled mechanics of the trade, and they were the ones that were wearing the white collars and getting the highest wages at the factory.

As a matter of fact, at one time there was a strike of the cutters, which the United Garment Workers conducted in 1905, and the tailors also came out, but when the union went to settle the strike they ignored the tailors and settled for the cutters only, and the tailors refused to go back to work, because nobody actually recognized the other [172] part of the industry.

As a white collar part of the industry, the cutters were the skilled mechanics, and they were the ones and at that time it was the policy practically of the entire trade union movement to cater to the skilled trade workers, and the cutters having been a part of the skilled workers, they were the ones organized and recognized.

In 1910 when the International Ladies' Garment Workers' Union conducted a large strike, which was settled by the late Justice Brandeis, we organized the semi-industrial make-up, which consisted of all of the labor, into one Joint Board. The cutters came in on a stipulation that they will join

(Testimony of George Wishnak.)

the Joint Board, provided they will be given an autonomous standing, that they will be able to elect their own representatives, and attend to their own complaints and their own affairs. This has been carried on practically up to this date.

In addition to that, while none of the other locals or crafts, have any examination whether a man can do the job good, the cutters have an examination. Back east no cutter can come into the local unless he has passed the examination of the local as a full qualified cutter. A qualified cutter is understood to be a man who can make a pattern, make a mark and make a cut, and knows the difference between cutting in the middle of the chart, and not at one [173] end or the other. In Los Angeles the conditions are the same since I have been here. Only about three or four weeks ago, the representative of the Cutters Local, Mr. Jack Haas, has been elected by his own local, while all the other crafts jointly elect their representatives. In other words, the cutters claim that due to the skill of their craft, the other locals could not represent the interests of the cutters.

Naturally, when we go out organizing, we give every local the opportunity to go out organizing its craft, and everybody is interested to organize the different crafts, and it sometimes happens that we organize the operators, finishers, pressers, examiners, cleaners, and drapers, and cutters, and sometimes we organize cutters only. We never organize other units singly, because the other units are not

(Testimony of George Wishnak.)

of as vital importance in the shop as the cutters are. Therefore, whenever we organize a cutters' unit, we feel that that unit is the most dependable part of the factory.

Q. (By Mr. Nicoson) That is the situation at the present time? A. Yes, sir.

Q. Now, at the present time have you any connection with the Cutters Local that filed the charge in this case, No. 84?

A. As manager of the Dress Joint Board, I naturally have contact with the Cutters Local, as well as any other local. [174]

Q. There has been some testimony by the previous witness about a George Wishnak, a member of the union here in Los Angeles, of three to whom was entrusted the duty or obligation of determining when to call a strike in Los Angeles. Are you the same George Wishnak? A. Yes, sir.

Q. You are. Will you tell me whether or not you and your colleagues arrived at any decision in connection with the cutters in the employ of Lettie Lee?

A. When we were informed by the Cutters' representative the cutters, the majority of the cutters, signed up with the union, and that our attorney was attempting to get in touch with Lettie Lee, and when we were informed that Lettie Lee did not want to talk, or rather, did not return the telephone call of our attorney, we then decided to call the Lettie Lee cutters on a strike.

Q. And did you? A. We did.

(Testimony of George Wishnak.)

Q. Now, are you acquainted with the general description of an employee called an assorter or a bundler? Do you know of any such designation?

A. In our union we have——

Q. Do you know of that?

A. Why, of course I do.

Q. Go ahead. [175]

A. We have members of the miscellaneous local among the finishers, examiners and the less qualified workers. We also take in assorters and drapers.

Q. What do you mean by “we” take in assorters?

A. The local union takes in assorters in that particular craft.

Q. Do you mean when you say “we”, that the Cutters Local does?

A. No, no. I say that the local union that takes in unskilled help.

Q. Such as the operators and the like?

A. No, not the operators are not considered unskilled. They are semi-skilled. They are less skilled than the cutters, but are semi-skilled. But, in addition to operators, there are cleaners, examiners, pinkers, assorters, errand girls, and we have other miscellaneous that are called all kinds—qualified as other workers in the shop. Those workers are members of the union. And they are also classified as to how much wages they should receive, by which the scale of wages is made.

An assorter is classified as unskilled at \$17 per

(Testimony of George Wishnak.)

week, while a draper is \$20 per week. A special machine operator is also \$20 per week, according to our contract. The cutter is \$40 minimum and up. So you can understand that we do not look upon an assorter as a qualified worker or anyone [176] near the skill of a cutter.

Q. Would you say that the assorter is in the lowest wage bracket of any? A. Yes, sir.

Q. Do you know whether or not assorters are admitted to the Cutters Union?

A. No, sir, they are not.

Q. Are you familiar with the job of sloping?

A. Yes, sir.

Q. Do you know what that is? A. Yes, sir.

Q. Do you know whether or not a sloper is admitted to the Cutters Local? A. No, sir.

Trial Examiner Erickson: Read that question and answer, please.

(The question and answer were read.)

Trial Examiner Erickson: What is your answer now? You don't know?

The Witness: No. I say they are not admitted.

Trial Examiner Erickson: All right.

Q. (By Mr. Nicoson) Are you acquainted with the trimmer? A. Yes, sir.

Q. Do you know what that means?

A. Yes, sir. [177]

Q. Are trimmers admitted to the Cutters Local?

A. They are not.

Mr. Nicoson: They are not. I think that is all. You may cross examine.

(Testimony of George Wishnak.)

Cross Examination

Q. (By Mr. Shapiro) Do you know when these six employees named in this complaint became members of Local 84?

A. Except from hearsay, when it was reported to the strike committee. I couldn't tell you when exactly they signed up, and when they were admitted.

Q. Well, when was it reported to you that they had become members?

A. On the 23rd we called together—you see, as you were already told, there were only three of us who knew when we were going to call the strike. On the eve of the strike, on the 23rd, when nobody knew that the strike was going to be called, but we did, we called together the representatives of the different locals and asked them to report to us whom they have signed up and what they have signed up.

Q. What time of day was that on July 23rd?

A. About 8:00 o'clock.

Q. When you were advised——

A. About 8:00 o'clock in the evening.

Q. About 8:00 o'clock in the evening?

A. Yes, sir. [178]

Q. That is the first knowledge that you had that the cutters in Lettie Lee's factory had affiliated themselves with Local 84?

A. I wouldn't say that. I had the first knowledge unofficially. I knew that contacts were being

(Testimony of George Wishnak.)

made with Lettie Lee cutters, as well as the other shops. I also knew that Harry Scott had asked Sokol to call Lettie Lee about the cutters, but the official report came in on the 23rd to our meeting.

Q. As a matter of fact, the majority of the men mentioned in the complaint didn't join with the local until the 23rd of July, did they?

A. I don't know.

Mr. Nicoson: I object to that. There is nothing in the evidence to show that.

Trial Examiner Erickson: Objection sustained.

Q. (By Mr. Shapiro) What information did you have, when you decided to include Lettie Lee among the employers to be picketed and against whom the strike was to be called, what information did you have that Lettie Lee was not willing to talk or to deal with the representatives of your local?

A. First of all, we have sent letters to all non-union shops. I personally did. I think it was at the beginning of July, asking them to confer with us regarding their workers in the plant, as we have some workers who are being [179] signed up in their shops, and that we would like to confer with them. The firm of Lettie Lee has not replied to our letter. This information I had of my own experience.

Secondly, Scotty reported that he got in touch with our attorney and that our attorney had made several attempts to contact Lettie Lee, and that none of the firm wanted—cared to talk to him.

Q. As a matter of fact, Vito Cimarusti did not

(Testimony of George Wishnak.)

become a member of Local 84 until July 23, 1941, did he?

Mr. Nicoson: I object to that. That is contrary to the evidence in the record.

Trial Examiner Erickson: Sustained.

Mr. Nicoson: There is an exhibit to show.

Mr. Shapiro: Isn't it July 23rd?

Mr. Nicoson: July 21st.

Mr. Shapiro: I beg your pardon. July 21st.

The Witness: I don't know. Maybe yes, and maybe not. We were informed that they were being signed up and were getting reports that the boys were taken in, but technically, whether they did sign up on that day or not, I could not tell you.

Q. (By Mr. Shapiro) Then you were advised about 8:00 o'clock in the evening on July 23rd that the cutters had joined? A. Yes, sir. [180]

Q. And the strike was called for 6:00 o'clock the following morning?

A. No. When we were advised by Scott, he didn't advise us as to whether the strike should be called. He simply advised us what the situation was.

Q. And then you advised them?

A. Then we told him about 12:00 o'clock, midnight, that the strike would be at 6:00 in the morning.

Q. How many other places, other than Lettie Lee, was the strike called again?

A. The strike, as a matter of fact, was to affect the entire industry.

(Testimony of George Wishnak.)

Q. Every manufacturer in town?

A. Every manufacturer in town.

Q. You didn't have any particular grievance against Lettie Lee, that you didn't have against the other manufacturers, did you?

A. Well, with this exception, the other manufacturers have replied. You see, all the other manufacturers, the Mayor called a committee of the manufacturers and the union to settle the strike, and the other group of manufacturers responded to the Mayor's call. Lettie Lee did not.

Q. Was Lettie Lee the only manufacturer that did not?

A. Lettie Lee and their group; I think four or five of them.

Q. Are women cutters admitted to Local 84?

[181]

A. If they can pass the grade.

Q. How many women cutters are there in Local 84?

A. I don't think there are any. Our constitution has no prohibition against women. We are admitting women the same way as we admit men, on equal terms, providing, naturally, that they can pass the grade.

Q. Is there any reason why a woman who performs the same service as a man in the cutting department in a factory cannot be admitted to your union?

A. If she can command the same salary, she cer-

(Testimony of George Wishnak.)

tainly will be admitted and protected, the same as any other men.

Q. Is it a question of salary that determines her eligibility to membership?

A. Well, in a way the salary determines the skill of the man.

Q. Suppose a woman performs exactly the same services that a man performs and gets less money for it, would she be eligible to membership?

A. Oh, yes, she would, and we would try to raise her salary to the salary of the men.

Q. There are new systems, and machines, and devices in use in the industry, are there not—

A. Yes, sir.

Q. —that were not in existence when you gained your early experience? [182]

A. Yes, sir. We used to cut with a knife, you know, without power.

Q. Did I understand you correctly that you would not admit a cutter to membership in Local 84 unless he was a pattern maker?

A. No, unless he passes—unless he can show skill as a cutter, that is, grading. No, pattern makers are already the highest skill in the trade, but usually a man is admitted if he can grade a pattern and make a mark.

Q. Were you in the court room this morning when Mr. Cimarusti testified concerning the services that Eunice Usher performed in the factory?

A. Yes, sir.

Q. What would you say her position was?

(Testimony of George Wishnak.)

A. Sloper.

Q. A sloper? A. Yes, sir.

Q. Do you have a separate local for slopers?

A. No, sir.

Q. They fall within the miscellaneous classification?
A. Yes, sir.

Q. In what way does the work that Eunice does differ from the work performed by any of the cutters?

A. Roughly speaking, I thought that your people were members of the industry and can explain to you, but when we meet with [183] lawyers who are not acquainted with the details of the industry they spend a lot of time on things that are so obvious to the men in the industry. If you ask your manufacturer, I think you will find——

Q. I am asking you.

A. And I am telling you a sloper is not a cutter, doesn't know the A, B, C's of the cutting game.

Q. Will you tell me in what respect the services performed by Eunice Usher differ from those performed by any of the cutters at Lettie Lee's plant?

A. Sure.

Q. All right. At the outset, let's understand each other. I don't claim to be a manufacturer or an authority in this line.

A. No, but look. Here is a cutter. He comes in the morning and he gets a ticket. On that ticket is written size so and so of so many dresses, such material, and, here, go ahead. He has to go to look for the pattern. Then he has to go and find the

(Testimony of George Wishnak.)

material. Then he has to make his lay, to find out as to how much goods would this pattern require. Sometimes a bum cutter can break a manufacturer, if he takes more material than is required for cutting that particular dress.

Sometimes a cutter who doesn't know how much goods to allow in going from size 16 to an 18, or when he goes down [184] from the 18 to the 16, he will also break the manufacturer, because the dresses will not fit when he doesn't grade sufficiently from 18 and down to the 16.

After he makes all his preparations, then he makes his mark and goes to the cutting. Just the cutting with the machine is not the most important part. The most important part is when he prepares for the cutting with the machine.

Now, here is a sloper. After the cutter—by the way, do you know where the word “sloping” comes from? I will tell you. You know, they used to make pleated skirts at one time and the material used to be pleated straight, but women have hips and have waists, and the waists are smaller than the hips. So they have to take it in in the waist and slope it down on the hips, so that the skirt wouldn't be too narrow in the hips and too broad in the waist. So all the sloper has to do usually, or sometimes, say, when the stitching has to be made, let us say, 10 or 12 inches down, she puts a chalk mark down as to how far down the operator should do the stitching, and when she comes to the waist,

(Testimony of George Wishnak.)

she may have to cut a little piece at this end (indicating), and a little piece at this end (indicating), and that is all she can actually do. She has nothing else to do on that skirt. She can do nothing else.

Now, if you think that this is the service, that this is what you would call a qualified cutter, and that Mr. [185] Bothman or anybody would pay a cutter's salary to a worker who can learn this trick within two weeks time, well, you have another guess coming.

Q. Mr. Wishnak, suppose there is one cutter or one man who makes the marks or the markers, whatever you call them, and none of the other cutters are bothered with them, and all they do is cut out the material, the cutters who simply do the cutting out either with the shears or the power device, do their services differ in any material respect, under those circumstances from the services performed by Eunice?

A. Oh, yes. Oh, positively. It simply shows that you haven't been guided right on this.

Q. Well, you just tell me.

A. I will tell you.

Q. (Continuing) —wherein their services differ.

A. Imagine that you have a seven or ten gore skirt, and if the cutter will cut on this side—an inexperienced cutter will cut on this side (indicating) of the chalk mark, or on this side (indicating), you may have your skirt two inches too wide or two inches too narrow.

(Testimony of George Wishnak.)

If he is an experienced cutter, he will know exactly where to cut the skirt, or the blouse, or the dress. If he isn't an experienced cutter, he certainly wouldn't know the difference.

While it wouldn't make a great deal of difference if [186] you have a three gore skirt, if you cut on this side of the chalk mark, or the other, it does make a difference if you have more pieces, so the question of having an experienced cutter is important for everybody that knows the A, B, C's of manufacturing.

Mr. Shapiro: Would your Honor permit Mr. Bothman to ask this witness one or two questions? He feels he can develop this subject a little more fully, and I think he is probably right.

Trial Examiner Erickson: Yes, he may do that.

Mr. Nicoson: Yes.

Q. (By Mr. Bothman) Have you taken an active part in the manufacturing, or how long has it been since you have taken an active part in manufacturing?

A. Well, as a matter of fact, I have never been out of a shop. All my life.

Q. You mentioned something about 1910, that you stopped being active as a manufacturer?

A. But I used to come into factories and advise people how to do things and what to do.

Q. The reason I am asking that question is because at the present day of manufacturing, it is quite different from what you are explaining, because a sloper today in intricate manufacturing—

(Testimony of George Wishnak.)

Mr. Nicoson: Oh, I object to that. That is testimony. [187]

Trial Examiner Erickson: Yes, sustained.

Mr. Shapiro: You can testify to that later, but any questions you want to ask, the Court will permit you to ask them.

Mr. Bothman: Pardon me.

Q. (By Mr. Bothman): When you say a sloper cuts off ends, are you sure that is all the sloper does?

A. It depends on how the house wants it done. You might ask the sloper to pin out the waist, and then you may have a sloper pin out the bibs, and you may have them do one thing and another.

Q. Does a sloper handle a scissors?

A. Yes, sir.

Q. Do they cut the material?

A. Yes, sir.

Q. Then you say it has nothing to do with cutting?

A. No, sir. So does the operator handle a scissors. So does a finisher. This is a trade where a scissors is being handled from top to bottom——

Q. Yes, I agree with you.

A. —and if you want to know my qualifications, you can ask Mr. Markowitz, for whom I worked, or for his father, and he was in the factory too.

Q. When the markers are made and handed to a cutter, you contend that a man can cut straighter than a woman; is that [188] correct?

(Testimony of George Wishnak.)

A. No, sir. If the woman has had experience, she can cut as well as the man; if she has experience and acquired the skill.

Q. That is true in any line, isn't it?

A. Why, of course.

Q. But you will admit men into your Cutters Local that can't make patterns?

A. Yes, sir.

Q. I believe you made the statement before that that was one of the qualifications?

A. Yes. I think the Cutters' representative will answer that, but I think they do. Usually we ask for a man to know how to make a marker and how to grade a pattern. Back east most of the cutters know how to make a pattern too.

Q. But you wouldn't say that is the qualifications for entering this Local?

A. I couldn't tell you that. Our representative for the Cutters Local will tell you that.

Mr. Bothman: That is all.

Trial Examiner Erickson: We will recess for ten minutes.

(A ten minute recess was taken.)

Trial Examiner Erickson: The proceeding will come to order.

Mr. Nicoson: May I recall Mr. Wishnak for an omitted [189] question.

Trial Examiner Erickson: You may.

Redirect Examination

Q. (By Mr. Nicoson): You are the same George

(Testimony of George Wishnak.)

Wishnak who previously testified in this hearing, are you not? A. Yes, sir.

Q. There is some testimony in the record, Mr. Wishnak, concerning a strike called on July 24, 1941, against other dressmakers in Los Angeles other than Lettie Lee. Do you know if that strike has been terminated?

A. It has been terminated with those manufacturers that came to an agreement with the union. It has not been terminated against those who have not come to an agreement with the union.

Q. Was it terminated in connection with Lettie Lee? A. No, sir.

Q. Why not?

A. Because they have not come to terms with the organization. They refused to bargain with the organization.

Mr. Shapiro: I will move to strike the last portion of the witness' answer, that they refused to bargain, to the end that it is a conclusion of the witness.

Trial Examiner Erickson: Let it stand.

Mr. Nicoson: That is all.

Mr. Shapiro: No questions.

(Witness excused.) [190]

Mr. Nicoson: Mr. Haas.

JACOB HAAS,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Sokol: Mr. Shapiro, will you at this time stipulate that the Cutters Local 84 of the I.L.G. W.U. is a labor organization within the meaning of the Act?

Mr. Shapiro: Yes, I will.

Mr. Nicoson: I will stipulate to that.

Q. (By Mr. Nicoson): Will you state your name for the record?

A. Jacob Haas, H-a-a-s.

Q. What is your business or occupation?

A. Well, up until three weeks ago I was a cutter. Now I am the business agent for the Cutters Local.

Q. Are you a member of the Cutters Local?

A. Yes, sir.

Q. How long have you been a member of the Cutters Local?

A. Since about 1932.

Q. As a member of the Cutters Local, do you have any knowledge of the eligibility of employees to become members in the Cutters Local?

A. Yes, I have. [191]

Q. Will you state what they are, please?

A. Well, in order to become a member of the Cutters Local, we have what we call an executive board and a membership committee from the execu-

(Testimony of Jacob Haas.)

tive board, so that anyone wishing to join the Cutters Local is sent to the membership committee, and there they are asked all questions pertaining to cutting, and so forth, before the membership committee recommends them to the executive board as eligible for the Cutters Local, as a member in the Cutters Local.

Q. How long has that system been in effect?

A. Well, that has been in effect ever since we had the union here in Los Angeles.

Q. How long has that been?

A. Well, there was a Cloak Makers Union here prior to that, but there was no Local 84 until about 1932.

Q. Now, this system of determining qualifications, does that precede the signing of a designation card, or is that between the signing of the designation card and the culmination of final membership?

A. I may answer it this way: A cutter makes an application to Local 84, Cutters Union, through the window, Local 84 window. That is, the girl, the clerk there, makes out an application and he appears before this membership committee. If the membership committee feels that this person hasn't worked in enough of the shops to qualify him as a cutter, [192] they send him to an examining committee, and then they are either recommended as a cutter to our local or not recommended.

Q. Do you know whether or not the Cutters Local here has officers separate and apart from the

(Testimony of Jacob Haas.)

other, the miscellaneous local I believe somebody termed it here? A. Yes, that's true.

Q. They have separate officers?

A. Separate officers.

Mr. Nicoson: That is all. Cross examine.

Mr. Shapiro: No questions.

Trial Examiner Erickson: I have only one question.

Q. (By Trial Examiner Erickson): Does the Cutters Local No. 84 represent any of the miscellaneous employees, if those miscellaneous employees by a written designation ask that local to represent them in matters of collective bargaining?

A. As far as I know, it has never been practiced by our local. The only thing we represent is cutters, and I can give you a more clear definition, if you want to know what a cutter is.

Q. Well, the employees that worked at Lettie Lee applied for membership and they signed a designation card, which is in evidence here, I think, as Board's Exhibit No. 2. Now, would that card in itself start the wheels into motion so far as the local becoming the bargaining agent for those [193] employees? A. Yes.

Q. Without anything further?

A. Well, you know, the first thing, there is a proceeding; in other words, before they sign these cards, there are quite a few matters to go through. But I happened to be one that spoke with the boys in the restaurant they have given in the testimony.

(Testimony of Jacob Haas.)

We spoke with these boys, and we know most of them and where they worked, and so forth, and in their case it would not have been an absolute necessity for them to go through the regular procedure in the case.

Q. That was before they signed the cards?

A. That was before they signed the cards, that we knew who we were dealing with and what type of cutters they were.

Trial Examiner Erickson: All right. That is all.

(Witness excused.)

Mr. Nicoson: David Sokol.

DAVID SOKOL,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Nicoson): Will you state your name for the record, please.

A. David Sokol. [194]

Q. What is your business or occupation?

A. Attorney.

Q. Where are you admitted to practice, Mr. Sokol?

Mr. Shapiro: I will stipulate Mr. Sokol's qualifications.

(Testimony of David Sokol.)

The Witness: I am admitted to practice in California and before the Supreme Court of the United States, and in the Federal courts.

Q. (By Mr. Nicoson): As an attorney, do you have any connection with Cutters Local No. 84 of the I.L.G.W.U.?

A. I am its legal counsel.

Q. How long have you served in that capacity?

A. Since June, 1941, approximately.

Q. Will you state whether or not on or about July 22nd, 1941 you had a conversation with a Mr. Harry Scott? A. I did.

Q. What was the substance of that conversation, and who made the statements?

A. Mr. Scott informed me——

Mr. Shapiro: Just a moment. I am going to object to any conversations not in the presence of the defendant on the ground they are hearsay.

Trial Examiner Erickson: Overruled.

The Witness: Mr. Scott informed me that he had signed the cutters of a concern known as Lettie Lee, Inc. I asked to see the membership cards, and asked him how many were [195] employed there, and, as I recall, it appeared to be a majority. And he told me over the phone that he wanted me to contact the company, to see whether or not the company would bargain. He stated to me that his own relationship with the company was adverse, that the company officials would not talk to him.

Q. (By Mr. Nicoson): Did you follow out those instructions? A. I did.

(Testimony of David Sokol.)

Q. What did you do to follow them out?

A. I called the company and left my name and telephone number the first time. The second time, I think on the 23rd of July, I called again and there was no response to my first call. I called again, and on this occasion I stated that I was calling for the Cutters Local, and that I wanted to inform the management that the Cutters Local desired to enter into negotiations and desired the company to recognize it.

I asked the girl to make note of my words, and I told her that if the company did not recognize the union, inasmuch as it represented the majority, there was a possibility of a strike because of the company's unfair labor practices. And I may say at that time, although I did not say it over the phone, I intended to relay to the responsible official of the management other unfair labor practices which I had discovered.

Mr. Shapiro: May I examine Mr. Sokol on voir dire for [196] one moment please.

Trial Examiner Erickson: Yes.

Voir Dire Examination

Q. (By Mr. Shapiro): With whom did you have your telephone conversations?

A. That I do not know. Later—I will say this, to save a little time—later, on the 25th day of July, I asked a girl whom I talked with what her name was, and she stated her name was Finkenstin.

(Testimony of David Sokol.)

Whether or not that was the same girl that I talked to on the preceding days, I do not know.

Q. You don't know the name of the girl you talked to on the 23rd?

A. I didn't inquire for her name.

Q. You don't know whether she was an officer, agent or other official of the company?

A. I do not.

Q. For all you know, she might have been a telephone operator or the switchboard girl?

A. I do not know her name.

Mr. Shapiro: I move to strike all the testimony of Mr. Sokol with reference to what he told the girl during the course of the telephone conversation, on the ground there has not been any proper foundation laid to admit the conversation, and that it is not binding on the respondent.

Mr. Nicoson: Before you rule, may I be heard?

[197]

Trial Examiner Erickson: The motion will be denied.

Q. (By Mr. Nicoson) When you called the first time, did you ask for any particular person?

A. I asked for Mr. Bothman, Mr. Sam Bothman.

Q. Do you know what his connection is with Lettie Lee?

A. I had been informed that he was one of the owners.

Q. Is that Mr. Sam Bothman, sitting at counsel table here?

(Testimony of David Sokol.)

A. I did not know at that time that it was the Mr. Bothman who is now present.

Q. Do you now know—— A. Yes.

Q. ——that that is the same Sam Bothman who has some connection with Lettie Lee?

A. That is my understanding.

Q. And that is the Mr. Bothman you were attempting to get in touch with?

A. That is correct.

Q. On the 23rd, when you called, for whom did you ask? A. Mr. Bothman.

Q. You asked for the same Mr. Bothman, I presume? A. Yes.

Q. And that is when you had this conversation with the girl, because of what? Why didn't you talk to Mr. Bothman?

A. Well, I asked her why Mr. Bothman hadn't returned my call, and then I told her to give him this statement. I told [198] her to be careful about it, that I wanted to make certain he would receive it.

Then on July 24th, I called again. There was no response again. Then on July 25th, I called exactly five times. Finally,——

Q. What did you do on the 24th?

A. On the 24th I called for Mr. Sam Bothman, again spoke to the girl, and told her that I was the attorney for Cutters Local 84 and wanted to request Mr. Bothman to enter into bargaining with the Cutters Local, which then represented a majority.

(Testimony of David Sokol.)

Q. On these three days did you leave your name and telephone number, at which you could be reached?

A. I did.

Q. What transpired on the 25th?

A. On the 25th, I had received no calls, so I called the first thing in the morning, and left word again with the girl to the same effect. Then I called later, about 10:30 that morning, and I was provoked—I withdraw that. I stated to the girl that I desired her emphatically to inform Mr. Bothman that all I was asking was that he speak to me or to the representatives of the union with respect to entering into a bargaining relationship, and I told her that the fact that he was not responding to my calls aggravated the situation. [199]

Mr. Nicoson: At this time, your Honor, I request a return on my notice to produce, served orally on the record on respondent's counsel last Monday, I believe it was, a week ago.

Mr. Shapiro: On Tuesday.

Mr. Nicoson: On Tuesday.

The Witness: There is one other call there, Mr. Nicoson:

Q. (By Mr. Nicoson) There is another call?

A. Yes. After receiving no response to my five calls on July 25, 1941, a week later I called the firm of Katz & Bothman, inasmuch as I was advised that Mr. Katz was related to Mr. Charles J. Katz, an attorney in this city whom I knew, and I felt that by directing the attention of Mr. Katz of the firm—of the other firm of Katz & Bothman—that possibly

(Testimony of David Sokol.)

I could get in communication in that way with Mr. Sam Bothman.

I told Mr. Katz that the union desired to enter into bargaining with Mr. Sam Bothman. He told me that he would try to speak to Mr. Bothman, Mr. Sam Bothman.

Subsequently, I called him again, and he told me that he had spoken to Mr. Sam Bothman.

Mr. Shapiro: I am going to object to anything Mr. Katz, or whoever the other party is, told Mr. Sokol. That is certainly the worst sort of hearsay, someone entirely [200] disconnected with Sam Bothman.

Trial Examiner Erickson: Did you hear the first part of the testimony?

Mr. Shapiro: Yes, I did, your Honor.

Trial Examiner Erickson: The objection is overruled. Proceed.

The Witness: Thereafter, I received no responses from the concern, Lettie Lee, Inc.

Trial Examiner Erickson: What was it that Katz told you?

The Witness: Mr. Katz told me that he would try to get to speak to Mr. Bothman.

Trial Examiner Erickson: After that?

The Witness: He told me he had talked to Mr. Sam Bothman, and he didn't say whether Mr. Bothman would discuss the matter with the union.

Mr. Shapiro: Does your Honor understand that the Mr. Bothman of Katz & Bothman is not this Mr. Bothman, but another party?

(Testimony of David Sokol.)

Trial Examiner Erickson: Mr. Sam Bothman is the same party as was referred to as having been talked to by Mr. Katz.

Mr. Shapiro: Yes, the same party, but he is not Mr. Bothman of Katz & Bothman. That is another dress manufacturer.

Trial Examiner Erickson: I understand that. Proceed.

Mr. Nicoson: Last Tuesday I served a notice to produce upon respondent, requesting that they produce a letter from [201] David Sokol, addressed to Lettie Lee, Inc., 719 South Los Angeles Street, Los Angeles, California, and dated September 8, 1941. There has been no response to that.

Mr. Shapiro: We don't have that, Mr. Nicoson. I have given you the letters of September 9th and September 13th. Those are the only two we have either in my file or in my client's file. If it was ever sent or received, we do not have it.

The Witness: I have a copy of the letter of September 8th.

Mr. Nicoson: I have too. Will you mark this, please?

(Thereupon the document referred to was marked as Board's Exhibit 7, for identification.)

Q. (By Mr. Nicoson) I hand you an instrument which, for the purpose of identification, has been marked Board's Exhibit 7, and ask you to examine it and state if you know what it is.

(Handing document to witness)

(Testimony of David Sokol.)

Mr. Shapiro: What is the date of that letter?

Mr. Nicoson: September 8th.

The Witness: That is the letter which I sent to the respondent on September 8, 1941.

Q. (By Mr. Nicoson) That is not the original, is it? A. That is a copy.

Q. Did you dictate that letter?

A. Yes. [202]

Q. Do you know that it was put into an envelope and sealed? A. Yes, it was.

Q. Was proper postage affixed? A. Yes.

Q. And was it deposited in the United States mails? A. It was.

Mr. Nicoson: I now offer this in evidence.

Mr. Shapiro: May I see it and examine the witness on voir dire, your Honor?

Mr. Nicoson: Certainly.

Trial Examiner Erickson: You may.

(The document referred to was handed to counsel.)

Voir Dire Examination

Q. (By Mr. Shapiro) Mr. Sokol, you didn't mail this letter yourself, did you? A. I did.

Q. You did? A. Yes.

Q. You deposited it in the mail chute yourself?

A. I did.

Q. Do you mail all your letters yourself?

A. No, but I wanted to make certain that I could testify with respect to mailing these letters. I will be very frank and say that. [203]

(Testimony of David Sokol.)

Q. Did you mail the letter of September 9th yourself?

A. Yes. All of these communications to Lettie Lee I mailed myself.

Q. Do you make it a practice of mailing your own letters?

A. When I intend to make any affidavit of mailing, I do so.

Q. Did you make an affidavit of mailing concerning this letter of September 8th?

A. No, but I sent a copy to the Labor Board, as I recall.

Q. You have a distinct recollection of putting it in the United States mail yourself?

A. That's right.

Mr. Shapiro: All right.

Trial Examiner Erickson: It will be received.

(Thereupon the document heretofore marked as Board's Exhibit 7, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 7

File C 1807

September 8, 1941

Lettie Lee, Inc.

719 South Los Angeles Street

Los Angeles, California

Attention: Mr. Bothman

Gentlemen:

On numerous occasions prior to and since July 24, 1941, the International Ladies' Garment Workers'

(Testimony of David Sokol.)

Union has endeavored to get you to bargain with it concerning wages, hours and working conditions of your cutters.

At all times the Union has been willing to prove to you that it represents a clear majority of these employees, but nevertheless you have refused to bargain. On July 24, 1941, and on at least four other occasions, the undersigned, on behalf of said Union, has endeavored to reach you concerning this matter. I have repeatedly left requests with your secretary that you call me, but you have failed.

I have been informed this date by Mr. D. C. Sargent, Field Examiner for the National Labor Relations Board, that you definitely refuse to bargain with the Union, even though it represents a clear majority of the cutters.

I do not know whether you have sought advice in this matter, but you should be completely assured by this time that the Union represents a majority of such employees and that you are bound under the law to bargain with the Union.

Kindly advise me forthwith whether or not you intend to bargain.

Very truly yours

DAVID SOKOL

DS:js

Direct Examination (Continued)

Q. (By Mr. Nicoson) Directing your attention to Board's Exhibit 7, and calling your attention to

(Testimony of David Sokol.)

blue pencil marks on there, those marks weren't on there when that was mailed, were they?

A. No.

Q. That isn't your marking?

A. No, it isn't.

Mr. Shapiro: Do you have an extra copy of that, Mr. Nicoson? [204]

Mr. Nicoson: That is the only one I have. Will you mark this, please?

(Thereupon the document referred to was marked as Board's Exhibit No. 8, for identification.)

Q. (By Mr. Nicoson) I now hand you a letter which, for the purpose of identification, has been marked Board's Exhibit 8, which was furnished me by counsel for respondent under my notice to produce, served upon him last Tuesday, and ask you to examine it and state if you know what it is.

(Handing document to witness)

A. That is the letter which I sent to the company on September 9, 1941.

Mr. Nicoson: I will offer this in evidence.

Mr. Shapiro: I will object to the introduction of that, if the Court please, upon the ground that it doesn't appear to be anything more than a communication from an attorney representing certain clients, in no particular capacity, and I direct the Court's attention to the first paragraph, in which it is simply stated, on behalf of certain named individuals he requests that they be reinstated. It

(Testimony of David Sokol.)

doesn't appear that he is making that request as an attorney or an officer or in any other capacity relating to the union in this particular case, and I don't think it is a proper exhibit.

The Witness: As counsel appearing in this matter, I [205] may say that the preceding letter gave my representative capacity, I believe, and also my previous communications.

Trial Examiner Erickson: He doesn't say "on behalf of certain persons." He names the persons.

Mr. Shapiro: Yes.

Trial Examiner Erickson: And these are the persons named in the complaint.

Mr. Shapiro: That is right, but he doesn't say in what capacity.

Trial Examiner Erickson: Objection overruled. The exhibit is received.

(Thereupon the document heretofore marked as Board's Exhibit 8, for identification, was received in evidence.)

(Testimony of David Sokol.)

BOARD'S EXHIBIT No. 8

DAVID SOKOL
Attorney at Law
707 South Hill Street
Los Angeles, California
Tucker 8500
September 9, 1941

Lettie Lee, Inc.

719 South Los Angeles Street
Los Angeles, California

Attention: Mr. Bothman

Gentlemen:

On behalf of Angelo T. Costella, Vito N. Cinarusti, Nolan Berteaux, Louis Babber, Joe Sardo and Donald F. Quinn, I am demanding that they, and each of them, be immediately reinstated to their former positions with your concern, without the loss of any rights or privileges which they may have had prior to the strike.

The above named have requested that I ask you to reinstate them and are ready, willing and able to immediately return to work.

At the same time, pursuant to my letter to you of September 8, 1941, I am demanding that you bargain with the International Ladies' Garment Workers' Union, which is the representative of these employees and a majority of your cutting department.

(Testimony of David Sokol.)

I shall expect you to inform me as to your position by September 11.

Yours very truly

DAVID SOKOL

DS:js

Mr. Shapiro: I didn't mean to mislead you, your Honor, by saying "on behalf of certain persons," but my point is that he doesn't say that he makes the demand as the attorney, agent or representative of the union. It isn't a demand on behalf of the union.

Trial Examiner Erickson: It is in evidence.

Mr. Nicoson: Will you mark this, please?

(Thereupon the document referred to was marked as Board's Exhibit No. 9, for identification.)

Mr. Shapiro: If that is the letter I produced, I have no objection to your using that.

Q. By Mr. Nicoson: I now hand you a letter which, for the [206] purpose of identification, has been marked Board's Exhibit 9, which was furnished me in response to my notice to produce on counsel for respondent last Tuesday, and I ask you to examine it and state if you know what it is.

(Handing document to witness)

A. This is the letter I wrote the respondent on September 13, 1941, and in connection with this I want to state that I called to the attention of the

(Testimony of David Sokol.)

respondent the fact that I was requesting reinstatement on behalf of the union.

Mr. Nicoson: I offer that in evidence.

Mr. Shapiro: I have no objection to this one, your Honor.

Trial Examiner Erickson: It will be received.

(Thereupon the document heretofore marked as Board's Exhibit 9, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 9

DAVID SOKOL

Attorney at Law

707 South Hill Street

Los Angeles, California

Tucker 8500

Union Label-100

September 13, 1941

Lettie Lee, Inc.

719 S. Los Angeles St.

Los Angeles, California

Attention: Mr. Bothman

Dear Sir:

I neglected to advise you that the International Ladies' Garment Workers' Union was demanding that you also reinstate Mortimer Litwin, together with the other cutters named in our letter of September 9th.

To date I have received no reply to my letter of September 9 and naturally assume that you re-

(Testimony of David Sokol.)

fuse to reinstate the cutters named in the letter. So that there may be no question about the cutters that the Union is requesting be reinstated, be advised that the demanded reinstatement applies to all of the cutters who went out on strike.

Kindly advise me whether or not you will reinstate the men forthwith.

I am again urging upon you that you bargain with the cutters Union Local #84 of the International Ladies' Garment Workers' Union.

Very truly yours,

DAVID SOKOL

DS:sr

cc: Mr. E. C. Sargent
N. L. R. B.

Q. (By Mr. Nicoson) Did you, at or about these times, on September 8th, 9th and 13th, have any other communications or attempted communications with the Lettie Lee Company?

A. I believe I met Mr. Bothman up in court one day. Whether or not I asked him at that time to bargain, I don't recall.

Q. Are you acquainted with the complainants in this case by their names? A. Yes.

Q. Subsequent to these letters, did you have a meeting or conversation with them? [207]

A. Yes, about September 15th, a day or two after the final communication.

Q. Where did you have this conversation or meeting? A. In my office.

(Testimony of David Sokol.)

Q. What was the substance?

A. I informed them that I had requested the respondent to reinstate them. I may say that originally I was requested by Mortimer Litwin to get his reinstatement, and I believe he returned to work, but I nevertheless requested his reinstatement. At the time of writing the letters, I didn't know that he had returned.

Q. Did you have any further connection or activity with this case?

A. Well, I want to say this: I think that there are applications in for all of the members of the union except Mortimer Litwin, and he personally informed me on July 24, 1941, in my office that he desired the union to represent him. I think the union's record will also show that, if it is necessary to produce those records, but he personally informed me to that effect.

Q. Anything further?

A. Mr. Swartz, who was in my office, advised me that on April 13, 1941—I think that is the date—may I get my notes written on the occasion?

Q. Yes, you may. [208]

A. (Referring to notes) This was dictated on the occasion. Louis Swartz, head cutter at respondent's plant, informed me on July 24, 1941, that on April 24, 1941 he told Mr. Bothman that Scotty of the union wanted an interview with respect to collective bargaining with him, and that Bothman replied that he had nothing to talk over with Scotty.

(Testimony of David Sokol.)

Q. Who is Scotty, do you know?

A. The then business representative of the Cutters Local.

Q. Is that the Mr. Scott who just testified?

A. Yes.

Mr. Shapiro: I am going to move to strike the entire answer on the ground that April 24, 1941 was prior to any of the dates alleged or set forth in this complaint, and prior to the time that the union claims to have become the representative of these six individuals in the complaint for bargaining purposes.

Mr. Nicoson: We have a right to show background.

Trial Examiner Erickson: The motion to strike is denied.

The Witness: I want to add this, in the examination of myself: That prior to the strike I was advised that the respondent had told its employees not to join the Cutters Local.

Mr. Shapiro: Just a moment, Mr. Sokol. I know that the Court is not bound by the strict rules of evidence, but I think there is some limits so far as hearsay testimony is [209] concerned.

Trial Examiner Erickson: I don't know by whom he was told.

Mr. Shapiro: That is one objection. That does not appear, and also——

Trial Examiner Erickson: The objection is sustained.

(Testimony of David Sokol.)

The Witness: Louis Swartz and other employees informed me of the background of the labor relations of the company.

Mr. Shapiro: Just a minute, Mr. Sokol. I am going to object to any conversation between Mr. Sokol and Mr. Swartz upon the ground that Mr. Swartz has not been shown to be the agent or representative of Lettie Lee in any respect, and that Lettie Lee is not bound by any statements that Mr. Swartz might have made to Mr. Sokol, or to anybody else.

Trial Examiner Erickson: Overruled.

Mr. Shapiro: It is purely hearsay.

Trial Examiner Erickson: Overruled.

The Witness: The only thing I want to say in connection with that is that the strike was called by reason not only of the refusal to bargain, but previous unfair labor practices of the company and its general relationship to all organizing.

Mr. Shapiro: I move to strike the witness' answer in so far as it has to do with previous relations to labor or union controversy, upon the ground that it is incompetent, irrelevant and immaterial, has nothing to do with any of the [210] issues in this case, and is certainly hearsay so far as Lettie Lee is concerned.

Mr. Nicoson: He has a right to testify——

Trial Examiner Erickson: The motion is denied.

Mr. Shapiro: We don't even have the benefit of knowing who told him those things.

The Witness: I will answer that.

Mr. Nicoson: Well, the objection is sustained.

(Testimony of David Sokol.)

The Witness: Well, I desire to answer that question on cross——

Mr. Nicoson: Are you cross examining yourself? You are still my witness. I haven't turned loose of you.

Trial Examiner Erickson: Did you say I sustained the last objection, Mr. Nicoson?

Mr. Nicoson: I thought you did.

Trial Examiner Erickson: I didn't. I overruled the objection.

Mr. Nicoson: That is what I meant. What I meant was you ruled that the motion was denied. I probably got the terms confused.

That is all. You may cross examine.

Cross Examination

Q. (By Mr. Shapiro) When was the first time that you wrote to Lettie Lee concerning this matter? A. September 8, 1941. [211]

Trial Examiner Erickson: You might save time if Mr. Sokol examines himself, as he calls it, if he has anything further to put into the record, before you cross examine.

The Witness: No, nothing at this time.

Trial Examiner Erickson: All right. Then you may cross examine.

Q. (By Mr. Shapiro) You have told us on direct that you placed repeated calls at the place of business of Lettie Lee for Mr. Bothman. Did you ever ask for any other officer of the company?

A. No.

(Testimony of David Sokol.)

Q. Did you know what Mr. Bothman's connection was with Lettie Lee, Inc.?

A. Only that he was an officer and part owner.

Q. You knew that Lettie Lee, Inc. was a corporation, didn't you? A. Yes.

Q. You knew that presumably it had other officers?

A. Yes. I understand, I may say, that only he and Miss Lee were the holders of the stock in the corporation.

Q. Did you ever ask to talk to Miss Lee?

A. No, I didn't. I understood that he was the man to speak to.

Q. Did you know that Lettie Lee is the president of Lettie Lee, Inc.? [212]

A. I didn't know.

Q. Pardon? A. I didn't know.

Q. When you were told that Mr. Bothman was not in, and you discovered that he didn't return your calls, why didn't you ask for somebody else in the company?

A. That was not the answer. The answer was that he would not answer my calls. Finally, I got that from Miss Finkenstine. It wasn't a question of his not being in. Finally, she told me, after repeated calls on July 25th, she said, "He will not answer your calls."

Q. Did you then ask to talk to anybody else?

A. No, I didn't.

Mr. Shapiro: That is all.

(Testimony of David Sokol.)

Mr. Nicoson: That is all.

(Witness excused.)

Mr. Nicoson: Don Quinn.

DONALD QUINN,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Nicoson) State your name for the record. A. Donald Quinn.

Q. Where do you live, Mr. Quinn? [213]

A. 227 South Columbia.

Q. Is that in the city of Los Angeles?

A. That's right.

Q. On or about June 11, 1941 where were you employed, if you were? A. Lettie Lee, Inc.

Q. In what capacity?

A. As a cutter, a dress cutter.

Q. On that date did you attend a meeting at which Mr. Sam Bothman was present?

A. I did.

Q. Where did the meeting take place?

A. In the cutting department; in the cutting room.

Q. About what time?

A. About 4:30, just a few minutes after 4:30.

Q. Will you state what occurred at that time,

(Testimony of Donald Quinn.)

telling us who made any statements that were made?

A. Well, at 4:30 all the boys gathered around the cutting department, the cutting tables, and Mr. Bothman came in a few minutes afterwards. He walked in and he immediately said, "which one of you fellows, or any of you fellows going to join the union or have any intention of joining the union?"

Well, we all sort of laughed. We didn't give any direct answer. Then he went on to say, he went into a discussion about the union, how bad it was, how—— [214]

Mr. Shapiro: Just a moment. I am going to object to the witness summarizing.

Mr. Nicoson: I think that is right. Just state what was said. I sustain your objection.

The Witness: Well——

Q. (By Mr. Nicoson) Tell us, as best you now recall, what was said. You don't have to repeat the exact words, if you don't recall them. To the best of your recollection, what was said and who said it?

A. Well, Mr. Bothman said—started—he said about the union, he said, "Now, you know, I don't want you fellows to think that union is going to do anything for you." He said, "You know they are all out for your dues, and it is just a racket up there." He says, "They are not going to give you any protection. They may promise you a lot of things." He says, "Just like in my brother's shop

(Testimony of Donald Quinn.)

downstairs, which is Katz & Bothman," he says, "the cutters down there have a union shop, and they only work about three or four months a year, and when my brother gets busy he stuffs the shop with cutters, so they only average about three or four months of work a year."

Then he went on to say, he said—wait a minute—he said he would never sign a union contract: "I want you fellows to understand that I would never sign a union contract, but if I had to, you know what would happen?" He [215] said, "You know how I give the tickets out, and you get single garments to cut, and we cut it steady." He said, "I could hold those tickets and you fellows would be held back."

We said, "You can't do that." We kind of talked about that.

He said, "I could hold the tickets up for two or three weeks, and then I could call you fellows in for a couple of weeks, and then you would be off. As it is now, I am trying to spread the work out so that you fellows are staying employed as much as possible."

Then he went on to say about what happened in New York, how the union used to hold the fellows down there, that if they went in the union as a shipping clerk, they didn't have any possible chance for advancement at all, they didn't have any chance to become salesmen or get into a different department where they would earn more money.

So he covered several other points about that,

(Testimony of Donald Quinn.)

and finally he came back to the question, he finally said, "Now, I understand you fellows want more money." So one of the fellows had spoken up and said the cost of living had gone up, so that is why we wanted more money.

So then he repeated the question, "Well, you fellows aren't going to join the union," he says, "I will tell you what I will do." He says, "Either you can work overtime a [216] couple hours every night, maybe three or four nights a week," he said, "and at the end of the year you will make more money by working overtime than if I give you a raise," he says, "because if I give you a raise, I might have to lay you off, and then the time you lose would be more than made up if you worked this overtime."

So then he mentioned that in the latter part—I am sorry. I went over something—that was in the latter part of the conversation. But in the middle of the conversation, he said, "Now, you know I would never sign a contract, a union contract." He said, "Before I would sign that, I would rather close up the shop, Miss Lee could go back to her ranch in Texas, and I would go into some other business, but I wouldn't have a damn—but I wouldn't have a thing to do with those fellows up there."

Q. What fellows?

A. The union. He said, "The union." He said, "I know that Scotty," and he said, "those other—"

Q. What did he call them?

A. Well, he called them sons of bitches. So

(Testimony of Donald Quinn.)

then finally, just before the meeting closed up, he told us to think it over about the overtime, and whether we wanted the overtime or the raise, and to give him the answer Monday.

So we left the place there, and a few of us got to talking afterwards, and the next day we went to the restaurant [217] where we always eat, the Exchange Cafe. So there were four of us there, and a couple of the boys dropped in. So we decided there that we would rather have the raise than work the overtime. So that night—

Q. What did you do about that, during the course of the day, if anything?

A. Well, we talked to Lou Swartz. I did, and I believe several of the other fellows talked to him too, that we wanted to meet with Mr. Bothman that night, Thursday night. Well, Mr. Swartz kept advising us not to ask for a raise, to wait until next week. Well, we told him we wanted to see Mr. Bothman about that.

Well, he put us over until the next day. So, finally, one of the boys, Mr. Castella, encountered Mr. Bothman during the day and told him we wanted to see him that night. So he said, "All right." So he informed some of the other boys and the other boys informed me about it. So we had the meeting at 4:30 that night.

Q. What night is this?

A. Friday night.

Q. Where did the meeting take place?

A. In the cutting department.

(Testimony of Donald Quinn.)

Q. Who was present?

A. Present, Lou Baliber, Angelo Castella, Joe Sardo, Nolan Berteaux, myself, Mort Litwin and Lou Swartz. [218]

Q. And was Mr. Bothman there?

A. Bothman came in a few minutes after quitting time, and just as soon as he came in he said, "Well, boys," he says, "I hear you want the raise. Now, you want to know how much it is, how much it is, how much it is going to be. Well," he says, "it is going to be 15 cents an hour." He says, "you think that is fair?"

Naturally, we all agreed.

He says, "Well, that won't be the last of it, of this matter," he said, "later on, if things improve, in a couple of months you will be getting more money."

Then he said—I can't state absolutely if he stated anything about the union there at that time—but he says, "You are all with me, aren't you, boys?"

And, of course, we all said, "Yes." So Lou Swartz spoke up and said, "Well, you don't have to worry about the boys. They will be all right. They are with you."

Q. Did Mr. Bothman say anything about the scope of this raise?

A. It was to be in effect immediately, retroactive to Monday of the week, of that week; and, of course, he said that later on if conditions warranted we could get a little more money.

Q. To whom did this raise apply?

(Testimony of Donald Quinn.)

A. Just to the cutters only. [219]

Q. Was anything said about that?

A. Yes.

Q. What was said?

A. He said, "Now, I want you boys"——

Q. Who is "he"?

A. Mr. Bothman. Pardon me. Mr. Bothman said, "I want you boys to keep that just to yourselves, because, after all, if it gets around to the girls that you got a raise, they will want a raise too. So just keep your mouths shut, and work harder, so I won't have to put on any more help."

And that's all that he said.

Q. Now, directing your attention to July 21, 1941, I will ask you whether or not you on that date went to the union hall of the Cutters organization?

A. Yes, I did.

Q. Did you at that time sign anything?

A. I signed a card.

Mr. Nicoson: Will you mark this, please?

(Thereupon the document referred to was marked as Board's Exhibit No. 10, for identification.)

Q. (By Mr. Nicoson) I hand you a card which, for the purpose of identification, has been marked Board's Exhibit 10, and ask you to examine it and state whether or not you know what that is?

A. I signed that card on Monday, the 21st of July. [220]

Q. Is that your signature there?

A. That's my signature.

(Testimony of Donald Quinn.)

Q. Did you sign this at the union hall?

A. I did.

Q. This is the same card?

A. That's right.

Mr. Nicoson: We offer it in evidence.

Mr. Shapiro: No objection.

Trial Examiner Erickson: It will be received.

(Thereupon the document referred to, heretofore marked as Board's Exhibit 10, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 10

I, the undersigned voluntarily designate the International Ladies' Garment Workers' Union as my sole representative in collective bargaining with my employer.

Date 7/21

Name: Donald P. Quinn.

Address: 227 S. Columbia Ave.

S. S. No. 562-07-8788. Craft: Dress Cutter

Firm: Lettie Lee.

Union Label 111.

(Vuelta)



Q. (By Mr. Nicoson) Who went with you to the union hall that night, if anybody?

A. Lou Baliber, Angelo Castella, Joe Sardo, Vito Cimarusti, and Nolan Berteaux.

Q. Do you know whether any of the rest of them signed cards that night?

A. Yes. I was present. They all signed cards.

(Testimony of Donald Quinn.)

Q. They all signed cards. Did you see anyone at the union hall that night that you had a conversation with, outside of the six of you?

A. Yes, Mr. Harry Scott.

Q. What did you talk to Mr. Harry Scott about, if anything?

A. Well, we talked about that we figured we had the majority [221] of the cutters at the shop right here present, and what protection we would get in case there was a strike, and what conditions were in the new union contract for the year, for the coming year.

Well, he told us that he had an established precedent about organizing a unit in a factory, and that we didn't have to worry about our jobs, that we would have them, and that at present he was very busy, he couldn't go over the contract with us, but if we would meet with him Wednesday night, he would go over the contract with us.

Q. Did you meet with him later on about that?

A. Yes, we did.

Q. How long after that?

A. Wednesday night, the following Wednesday, the 23rd of July, we met him at the Alexandria Hotel at around 5:30 or 6:00 o'clock, I believe it was.

Q. What occurred? First, who was present?

A. Lou Baliber, Angelo Castella, Joe Sardo, Vito Cimarusti, Nolan Berteaux and myself.

Q. Anyone else?

A. Harry Scott, and Lee Shapiro—Leo Shapiro.

(Testimony of Donald Quinn.)

Q. What was discussed at that time, and state who made the statements, if any were made?

Mr. Shapiro: It is understood that I have the same objection to all of this testimony, which I claim is hearsay? [222]

Trial Examiner Erickson: You may have a continuing objection, but the objection is overruled, you understand.

Mr. Shapiro: I understand.

The Witness: Mr. Harry Scott went into a discussion of the contracts. We wanted to know what the wages were going to be for cutters, how many hours a week, and what protection the union was going to give us. And he told us we didn't have to worry about it. Of course, we wanted to know when the strike was going to be, because we all knew there was going to be a strike, because they had pamphlets in front of the building that there was going to be a strike in the industry.

Q. (By Mr. Nicoson) Did you know whether or not you were going to participate in the strike at that time?

A. Well, yes, we did, because we had joined the union, and we had already told Scotty that he could bargain for us Monday night, because we had the majority of the cutters. Whether he did or not, we didn't know at the time. And, of course, we knew if there was a strike in the industry and Lettie Lee refused to negotiate before the strike, we would naturally be involved too.

We wanted to know when the strike was going

(Testimony of Donald Quinn.)

to be. He told us he didn't know himself, it could be tomorrow, next week, next month, but just to be prepared for it.

Q. Did you go to the plant the next day? [223]

A. Yes, sir. I started for work the next morning around 7:30. When I got in front of the building, there was a big picket line there, and announcing that the strike was on, so I parked my car and went to the restaurant where we always eat, and some of the fellows were there; that is, a couple of them, Nolan Berteaux, and Joe Sardo, and Mort Litwin was there at the time. I am not sure whether he was there when I come in, but he came in presently, and we asked him what he was going to do. He said he would stick by us, that if we stayed down, he stayed down.

Then later on Lou Swartz came in, and Scotty came down and talked to us. He didn't have much to say. But later on Mr. Bothman walked in, I imagine around 9:30 or 10:00 o'clock, and he said, "Well, boys," he says, "I didn't think you would do this to me." He says, "Everybody is working in the plant. You are the only fellows out. Haven't I treated you O. K.?"

We said, "Yes, you have, but we are staying down. We belong to the union now, and we can't go up now, unless the union—unless we have a union contract."

So he says, "Well, listen, boys. There is no hard feelings." He says, "You want to stay down, that is all right with me. If you want to come back to

(Testimony of Donald Quinn.)

work, that's good and fine." And then he left there.

After that we left for the union. Some of the boys and [224] myself went over to the union to register, and they told us we didn't have to picket. That is why none of us picketed those first few days. And Lou Swartz came up there, and, of course, I was with Mort Litwin at all times, because he is a good friend of mine. So he registered there too with me. And a few of the girls that came out in sympathy with us, they registered too.

Q. Do you remember some time in September whether or not you attended a meeting in Mr. Sokol's office?

A. Yes, sir. We went to his office, I believe in September, I believe it was on a Friday.

Q. Well, do you remember going there?

A. Yes, I remember going there.

Q. Do you remember about when it was?

A. When it was, I am not sure of the date, but it was on a Friday.

Q. Was it the forepart, the middle part or the latter part? A. Of September?

Q. Yes.

A. I think it was about the middle part of September.

Q. Did you at that time have a conversation or attend a conversation with Mr. Bothman in front of the plant? A. Yes.

Q. About how long later?

A. Well, that meeting—now I recall it—that

(Testimony of Donald Quinn.)

meeting [225] with Mr. Sokol was on a Friday, and on the Saturday, the next day, we were picketing out in front. We would work in shifts on these picket lines, and Mr. Nolan Berteaux, Vito Cimarrusti, Nick La Caze and myself were on that shift when Mr. Bothman came by.

So he called us over to the side of the building, to the front of the lobby there, and he said, "Now, Vito Cimarrusti," he said, "I want you to come back to work." And he told the rest of us the same thing, he wanted——

Q. What "rest of us"?

A. He told Nolan Berteaux, he said, "want you to come back to work."

And then he told me "Don Quinn, I want you to come back to work, as an individual." He said, "I don't want to talk to groups. I don't want to have nothing to do with those guys up there." He didn't say "guys."

Q. What he say?

A. Well, he called them sons of bitches and stinkers. "I don't want to have anything to do with those chiselers up there," he said, "I want to talk to you fellows just alone." He says, "You know, they are going to drop you anyway. I want just you alone. I want you individuals to come up to work."

I said—well, I spoke up and I said, "Well, how about Joe Sardo, and Angelo and Louis Baliber?"

(Testimony of Donald Quinn.)

He said, "I don't want to have anything to do with those two stinkers, and that ex-convict."

Q. Did he say anything else at that time?

A. No, that's about all.

Q. Did any of your group make any reply?

A. No. We said we wouldn't go up unless we went up as a group, not as individuals, that he would have to speak to the union about it.

Q. You did say that?

A. Yes, I said that myself.

Q. Was that about all that occurred at that meeting?

A. Yes, I believe that was about all.

Q. After that meeting did you or did you not have a telephone conversation with Lou Swartz?

A. Yes. One of the guards gave me a card to call him up, that he wanted to speak to me personally. So I called him up that evening and asked him what he wanted to know.

Q. Before you go into that, how long was that after you had this meeting with Mr. Bothman?

A. I believe it was the following Tuesday. I am not certain about the date, but, anyway, I called him that evening.

Q. By phone?

A. By phone. So I asked him what he wanted. He says, "Well, I can't talk to you over the phone." He said, "I want you to come over to the house." [227]

I said, "Why can't you speak over the phone?"

(Testimony of Donald Quinn.)

He said, "There are too many ears." He said, "You don't have to be afraid over here."

I said, "I am not afraid of nothing."

He said, "What night will you be over?"

I said, "I will be over there Sunday."

Q. Did you go over there?

A. I went Sunday.

Q. What transpired, and tell us any statements that were made, and who made them.

A. Mr. Lou Swartz met me at the door and took me around to the back yard, and he started talking about coming back to work, asking me to come back to work. He said, "You know I have a full crew working up there."

I said, "You know I can't go back to work now."

I said, "If I come back, I have to come back with the rest of the boys."

"Well," he said, "that will never happen. You fellows haven't got a chance. I better let you know now. You just haven't got a darned chance. The union is going to drop you in a couple weeks. I have the inside information, and I know that the union is going to drop you in a couple of weeks, and you won't be able to get a job anywhere in town. You will be blacklisted."

I said, "I will have to take my chances, as they are." [228]

He said, "You fellows double crossed me. You didn't include me in your meeting."

I says, "How could we include you? You are the foreman, and practically the general manager."

(Testimony of Donald Quinn.)

He had told me previously, before we were given the raise, he had told me he was going to quit, oh, about six weeks before we even got the raise, that he was going to quit Mr. Bothman and go into business for himself, and that Mr. Bothman had given him a raise, and had agreed to a bonus of something like two or three per cent of the profits he was to get.

Naturally, I couldn't confide in him and I knew the rest of the boys couldn't confide in him about the rest of the union meetings, because we didn't consider him as a worker, because he was getting a part of the profits.

Q. Did you tell him that?

A. I told him that. He said, "You know, I stood to lose a lot by going on strike for you fellows."

I said, "Sure. You were making good money. It wasn't necessary for you to come down." But I said, "Mortimer came down, and we signed the cards, we signed at Sokol's office."

He said, "Mortimer should be included in that meeting."

I said, "After all, Mortimer is your brother-in-law." I said, "I don't think he would go behind our backs and tell [229] you about the meetings, but we couldn't take any chances, because you know how Mr. Bothman was about the union, because before we even went to work there, he was asking if I was a union member, because I knew a couple of fellows, and he asked them, they were union fellows, and he would say, 'Well, take their name.'" I says, "So,

(Testimony of Donald Quinn.)

of course, I told him I wasn't a union member, so Mr. Bothman hired me."

Q. Did I understand you correctly to testify that Mr. Swartz asked you to come back to work?

A. Yes, sir.

Q. Did he mention anyone else in that respect?

A. He didn't mention—well, I am not so sure about Vito. He said, "If you want to speak to Vito Cimarusti, and maybe Nolan, too, and you can talk to Nolan too, if you like."

So, of course, he wouldn't tell me why the union was going to drop us. He told me he was a member of Local 10 back in New York, I don't know whether that is true or not, and that's why he dropped out, and that this strike was going to end, and that, regardless, Mr. Bothman was even at that period that he spoke to me trying to get a contract with the Government to make uniforms, and he said, "You know, the union isn't going to strike against the Government."

I said, "I don't know anything about that."

He says, "Miss Lee is going back to Texas, and Mr. Bothman will be general manager of the concern, and I will [230] go in just as a plain ordinary cutter."

So, well, we talked about different things there, I mean talked about sports we were interested in, bowling, and things like that.

Q. Was anything said at that time concerning the signing of a contract?

(Testimony of Donald Quinn.)

A. Oh, yes. He said Mr. Bothman would never sign a contract—would never sign a contract, he would close the shop first. Of course, that was always repeated every time he talked to me, because he spoke on another time after. And he asked me, you know, the next day to first speak to Vito and to call him at 10:00 o'clock the next morning, and give him my answer.

Q. Told you to call whom?

A. Lou Swartz.

Q. And did you?

A. I talked to Vito in the morning on the picket line.

Q. By Vito you mean?

A. Vito Cimarusti, and Nolan Berteaux.

I told them Lou Swartz had told me to talk to them, if they wanted to come back to work.

They said, no, we would all go back as a group, and everybody go back.

So I called Lou Swartz at 10:30 that day, and I told him I wasn't coming back to work, and none of the other [231] fellows were interested in coming back either.

He said, "I think you are damned fools. You are just a chump, because you just mark my words, you are going to be holding the sack in a couple of weeks."

So that was all. I went—

Q. After that conversation did you later have a conversation with Mr. Bothman?

A. Well, several times on the picket line he used

(Testimony of Donald Quinn.)

to stop us and tell us, "Well, don't be damned fools, fellows. Go back to work. Your job is open up there."

Q. Do you recall whether or not you had such a conversation after you talked to Mr. Swartz?

A. I believe I did several weeks afterwards on the picket line; I mean, the group, two or three fellows there. I mean, he asked us every so often to come back to work.

Q. Have you since that time had any further conversation with Mr. Swartz in this connection?

A. No, I haven't.

Q. Or with Mr. Bothman?

A. No, I haven't.

Mr. Nicoson: Cross examine.

Cross Examination

Q. (By Mr. Shapiro) Are you working now, Mr. Quinn? A. No, I am not.

Q. Have you worked at all since you went out on strike on [232] July 24th? A. No, I haven't.

Q. Not at all?

A. No, I haven't. In a cutting department?

Q. I beg your pardon? A. Cutting?

Q. Well, have you had any cutting?

A. No.

Q. Have you done any other work?

A. No. No, I wouldn't call that cutting. I was just delivering, helping deliver some things for a friend of mine.

Q. Who was that? A. The friend of mine?

(Testimony of Donald Quinn.)

Q. Yes. A. Tom Phillips.

Q. Don Phillips? A. Tom Phillips.

Q. How long did you work for him?

A. Just a couple of hours.

Q. Just on one day? A. One day?

Q. Yes. A. Just the one day.

Q. Well, have you had any regular employment?

A. No regular employment. [233]

Q. Since you went out on strike?

A. No, I haven't.

Q. Have you had any work for anybody except Tom Phillips? A. No, I haven't.

Q. Have you received any money from the union in any form? A. I have received relief, yes.

Q. How much have you received?

Mr. Nicoson: I object to that.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro) Have you been employed by the union?

A. No, I haven't been employed by them. No, I haven't.

Q. Received any salary from them of any kind?

A. No, none, of any kind.

Q. Now, you went to work for Lettie Lee on June 11, 1941; is that right? A. June 11, 1941?

Q. Yes. A. No.

Q. When did you go to work for Lettie Lee?

A. I went to work for them in September of 1940.

Q. Who hired you?

A. I believe Mr. Bothman did. I walked in

(Testimony of Donald Quinn.)

there. As I entered the door, I rang the bell to ask for the head cutter, and they started to call Lou Swartz toward the window, and as he came to the window, Mr. Bothman went by there and he [234] said, "I think I know you."

I said, "Yes, I put in an application several months ago about a job."

And he said, "How long have you been working on silk dresses?"

And I said, "About six years."

And he asked me the places, and I told him.

He said, "Do you belong to a union?"

I said, "No."

Then he told Lou Swartz to put me to work. So I went to work that day.

Q. You went to work that day? A. Yes.

Q. Did you belong to the union at that time?

A. No.

Q. Did Mr. Bothman tell you that if you did belong to the union he wouldn't hire you?

A. No, he did not.

Q. Now, at this first conversation on June 11th in the cutting room, what did you or the other employees there have to say in reply to the remarks made by Mr. Bothman?

Mr. Nicoson: I object to that, unless he specifies the remark. The testimony is that there were several remarks, I think.

Mr. Shapiro: Well, this is cross examination. [235]

(Testimony of Donald Quinn.)

Trial Examiner Erickson: Do you understand the question?

The Witness: No, I don't. If he can specify the remark——

Q. (By Mr. Shapiro) All right. You say that Mr. Bothman said the union won't do anything for you, it is just a racket, and all they want is your dues, and so on? A. Yes.

Q. Did you make any reply?

A. Well, I knew from past and so on?

A. Yes.

Q. Did you make any reply?

A. Well, I knew from past experience, from fellows that had applied for work there, they had said that if they belonged to the union they didn't get the jobs, so I know how anti-union Mr. Bothman was, because I remember him in the strike of 1933. Well, at that time I was a cutter, an assistant cutter, I should say, in 1933.

Q. Mr. Quinn, I only asked you what you said, if anything in reply to what Mr. Bothman said.

Mr. Nicoson: He is about to tell you.

Mr. Shapiro: Well, let him tell us without giving his life history.

The Witness: Well, knowing that he was so anti-union——

Mr. Shapiro: Just a moment.

The Witness: Let me just go on. Then you can strike it out.

Mr. Shapiro: Well, I suggest, your Honor, that

(Testimony of Donald Quinn.)

the [236] witness be required to answer the question.

Trial Examiner Erickson: Yes, just answer the question.

The Witness: Well, let's see. What did I say? I don't remember the remarks we made. I can't remember definitely what I said.

Q. (By Mr. Shapiro) Did you say anything?

A. Oh, yes. We spoke—we were all speaking there.

Q. How long did the meeting take?

A. Oh, I imagine about 20 minutes, 25 minutes.

Q. Did the other men present take part in the conversation?

A. Yes, we all took part in the conversation.

Q. Did Vito have anything to say?

A. Well, I don't—I couldn't say definitely if it was just Vito that said anything.

Q. There was conversation back and forth, wasn't there? A. That's right.

Q. At the next meeting, which was some two or three or several days later, that is the meeting at which Mr. Bothman said that he was going to give you a raise and the raise was going to be 15 cents an hour; is that right? A. That's right.

Q. When he told you he was going to give you a raise, did he say that to continue on in his employ and receive the wage would depend upon your non-affiliation with a union?

A. No, he did not say that. [237]

Q. He didn't mention that subject, did he?

A. No.

(Testimony of Donald Quinn.)

Q. How long did that meeting last?

A. Oh, I imagine about 15 minutes. It didn't last very long.

Q. He said, "Are all you boys with me?" And what did you say?

A. What did I say?

Q. Yes.

A. Well, we said, "Of course we are with you." What else could we say?

Q. I don't know. I am only asking what you did say. Was there any other conversation on your part at that second meeting?

A. No, not that I can recall.

Q. Now, did all of you six men sign the union cards at the same time on July 21st?

A. We all signed there. We understood one of the fellows to say he had signed before, a couple of fellows had signed before, but we wanted them to re-sign again. We wanted all to sign in a bunch.

Q. And you all signed in the union hall on July 21st?

A. On a Monday, that's right.

Q. Prior to that time you had no union connections of any kind? [238]

A. No.

Q. Did you tell Mr. Bothman that you wanted to join the union or that you contemplated joining the union?

A. I didn't tell him that, because I would have been fired.

Q. Regardless of whether you would be fired or not, did you tell Mr. Bothman that you wanted to join or intended to join the union?

A. No, I did not.

(Testimony of Donald Quinn.)

Q. He didn't tell you not to join the union, did he? A. No.

Q. On July 24th, there was a strike called; is that correct? A. That's correct.

Q. Do you know how many of the employees of Lettie Lee walked out on that strike?

A. I believe about 30 registered at the union. All the cutters that signed up walked out.

Q. You mean the six cutters that signed up walked out?

A. That's right. Some of the assorters came out with us.

Q. How many assorters?

A. Let's see. There was Marie Chavez; Sarah, I don't know her last name, I can't pronounce her last name; and Saloma; Frances, who is an errand girl, and assorter. I believe that's all. Then there was some operators, and finishers, and a couple of the drapers that came out in sympathy with us.

Q. The strike wasn't limited then to cutters? [239]

A. It was cutters, so far as I know. It was called because he wouldn't negotiate for the cutters. That is what I understood it to be.

Q. But persons in other crafts than cutters did walk out, didn't they?

A. Oh, yes, they did walk out.

Q. And you think about 30 walked out altogether? A. I believe so.

Q. As a matter of fact, wasn't it about 20?

A. No, it was more than that. I believe the

(Testimony of Donald Quinn.)

union has the record of the registration on that day.

I am sure it will show more.

Q. Do you know how many employees Lettie Lee had in production capacities on July 24th, the date of the strike?

A. I don't know the exact figure. I figure around 70 or 80. I am not sure.

Q. As a matter of fact, don't you know it was over a hundred?

A. No, I don't know that. All I was interested in was the cutting department. That's all I was interested in. That's all I did.

Q. Mr. Bothman has repeatedly told you you can come back to work at any time you want to?

A. Yes, he asked me to return.

Q. How many times has he asked you to come back to work?

A. Oh, I believe he has asked me—let me see—about [240] three times.

Q. When was the first time he asked you to come back to work?

A. Well, he asked us all as a group, not as an individual. He just said, "Come on, you fellows, come on up to work."

Q. When was that?

A. When we were on the picket line. Oh, I imagine a week after the strike or two weeks after the strike.

Q. Did you go back to work?

A. No, we didn't.

(Testimony of Donald Quinn.)

Q. When was the last time he asked you to come back to work?

A. The last time was the day, that Saturday following the visit to Sokol's office on a Friday, when he asked us separately by name, said, "Don Quinn, I want you to come back to work," and "Vito Cimarusti, I want you to come back to work," and "Nolan Berteaux, I want you to come back to work." And there was a fellow that came by, I don't know whether he is a salesman, but Mr. Bothman asked him to come over and witness it.

So Angelo Castella was walking by at the time, and I called him, and Mr. Bothman said, "Never mind him."

Q. On the first time when he asked you to come back to work, he referred to all of you fellows to come back to work?

A. Not all of us were on the picket line. [241]

Q. Well, how many of you were there?

A. Just Nolan, myself, and I believe Vita Cimarusti. I am not positive.

Q. Who else? A. I think that's all.

Q. And he asked you all to come back to work?

A. Yes.

Mr. Shapiro: That is all.

Redirect Examination

Q. (By Mr. Nicoson) Did you ever hear Mr. Bothman say that he would like to have Mr. Sardo, Mr. Baliber and Mr. Castella come back to work?

A. No. He absolutely stated definitely that he didn't want them back, he wouldn't have them back.

(Testimony of Donald Quinn.)

Q. Were you ever requested by Mr. Bothman to return to work as a group? A. No.

Q. He made it very pointed that it was individually? A. That's right.

Q. And not as a group? A. That's true.

Mr. Nicoson: That is all.

Recross Examination

Q. (By Mr. Shapiro) Did Mr. Bothman tell you why he didn't want Sardo to come back to work? [242]

A. Trouble maker. He said Angelo and Lou Baliber are trouble makers.

Q. Did he give any other reason?

A. Well, of course, he says about Joe Sardo being an ex-convict, that's all I know, and he called Angelo and Louis stinkers. So what he meant by that, I don't know.

Q. Mr. Bothman never told you that because you had joined the union he would not take you back to work?

A. Well, we told him there at the time the union was representing us and he said, "Well, I don't want to have anything to do with the union. I am asking you to come back to work."

Q. He didn't refuse to take you back because you belonged to the union, did he? A. No.

Mr. Shapiro: That is all.

Redirect Examination

Q. (By Mr. Nicoson): But he had put that qualification on it?

(Testimony of Donald Quinn.)

A. He did. He absolutely said he didn't want to have anything to do with them up there.

Recross Examination

Q. (By Mr. Shapiro): Did he say why?

A. Well, he had already stated why, the reasons for it, when we had the question of the raise, and several times [243] after that.

Mr. Shapiro: That is all.

Mr. Nicoson: That is all.

(Witness excused.)

Mr. Nicoson: Nolan Berteaux.

NOLAN BERTEAUX,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson:

Q. Please be seated, and state your name.

A. Nolan Berteaux, N-o-l-a-n B-e-r-t-e-a-u-x.

Q. Were you on or about June 11, 1941, in the employ of Lettie Lee, Inc.? A. I was.

Q. When did you begin to work for Lettie Lee?

A. About August, 1940.

Q. And in what capacity?

A. As a cutter.

Q. How long had you been engaged in the cutter's business?

(Testimony of Nolan Berteaux.)

A. About 10 or 11 years.

Mr. Nicoson: Mark that, please.

(Thereupon the document referred to was marked as Board's Exhibit No. 11, for identification.)

Q. (By Mr. Nicoson): I hand you a card, which, for the purpose [244] of identification, has been marked Board's Exhibit 11, and ask you to examine it and state if you know what it is?

A. That is the card I signed in the union on the 21st of July, 1941.

Q. Is that your signature on there?

A. That's right.

Mr. Nicoson: I offer this in evidence.

Mr. Shapiro: No objection.

Trial Examiner Erickson: Received.

(Thereupon the document heretofore marked as Board's Exhibit No. 11, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 11

I, the undersigned voluntarily designate the International Ladies' Garment Workers' Union as my sole representative in collective bargaining with my employer.

Date 7/21/41.

Name, Nolan Berteaux.

Address, 936 W. 30th Street,

S. S. No. 563-05-6463. Craft, Cutter.

Firm, Lettie Lee.

(Vuelta)

Union Label 111.

(Testimony of Nolan Berteaux.)

Q. (By Mr. Nicoson): How did you happen to sign that card, Nolan?

A. Well, the majority of the cutters decided they wanted to have the union represent them, so we decided that day to go up there and sign up the cards as a group.

Q. Who went with you, if anyone?

A. Joe Sardo, Vito Cimarusti, Angelo Castella, Louis Baliber, Don Quinn and myself.

Q. Directing your attention to on or about the last week in September, 1941, I will ask you if you were in front of the building in which the Lettie Lee Company is housed? A. Yes, I was.

Q. Who was there with you at that time, if anyone?

A. Don Quinn, Vito Cimarusti, and Nick La Caze. [245]

Q. Did you at that time see Mr. Bothman?

A. Yes, I do recall seeing him at that time.

Q. And was there a conversation in which Mr. Bothman participated, that you heard?

A. Yes, there was.

Q. Will you tell us what happened, and what was said, and who said it?

A. Well, Mr. Bothman called us over, and he said, "Why don't you boys go back to work?"

So we told him, "Well, we are in now, we are in the union, so we couldn't go back."

(Testimony of Nolan Berteaux.)

“Well, how about the whole crowd—everybody?”

Q. Who said that?

A. Who said what?

Q. Who said “How about the whole crowd—everybody?”

A. One of us. I heard the conversation.

Q. Was it Mr. Bothman?

A. No, one of our group.

So Mr. Bothman called us each by name, and he said, “Now, listen. I don’t want to have anything to do with any group of you, the union, or anybody. I will offer you a job as an individual.” He pointed his finger, “You can go up to work right now, Don Quinn. You can go up to work right now, Nolan Berteaux, You can go up to work right now, Vito Cimarusti. Don’t tell me about that stuff, because [246] that way you will never get back to work.”

Q. Did anything further transpire about that time?

A. That’s about all I recall.

Q. Was anything said about the other three men?

A. Well, we had asked him, and he said he didn’t want—he didn’t want Sardo, Louis and Castella and he says, “Sardo, he is a stinker, I never did want him in the place,” and he said Louis and Angelo were trouble makers, so he didn’t want them around, “but you guys, you come if you want to.”

Mr. Nicolson: That is all. You may cross examine.

(Testimony of Nolan Berteaux.)

Cross Examination

By Mr. Shapiro:

Q. When you went to work in August, 1940, did you belong to any union?

A. No, I didn't at the time.

Q. Whom did you talk to about your employment?

A. As a matter of fact, I didn't talk to anybody. I was sent for.

Q. Were you asked whether or not you belonged to the union?

A. No. I went right in and went to work. I had been working in a scab shop next door, so I guess Mr. Bothman didn't think it was necessary to ask me.

Q. Did anybody tell you at that time, or at any other time, that if you joined the union you couldn't work for Lettie Lee?

A. No.

Q. How many cutters were there at Lettie Lee on July 24, 1941? [247]

A. Eight cutters.

Q. Who were they?

A. Vito Cimarusti, Joe Sardo, Louis Baliber, Angelo Castella, Nolan Berteaux, and Mort Litwin. That is seven. I was counting Lou Swartz. I don't guess you call him a cutter.

Q. And six of those went out on strike; is that correct?

A. Six of those signed up with the union.

Q. How many persons were employed in the

(Testimony of Nolan Berteaux.)

area enclosed by that partition that was testified to this morning? A. About 15.

Q. What kind of work did Eunice Usher do?

A. Well, she was a sloper.

Q. Do you draw a distinction between a sloper and a cutter?

A. Did you say, do I draw a distinction, or could I draw——

Q. Do you? A. Yes, I do.

Q. Do you classify her as a cutter? A. No.

Q. She uses the same tools you use, doesn't she?

A. Yes.

Q. She cuts materials from a marker, doesn't she?

A. Well, that isn't putting it very fair. You say she cuts materials from a marker. Anybody can cut material from a mark. You can cut material from a mark. That doesn't [248] make you a cutter.

Q. Well, I don't think I can cut material from a mark, or anything else. In what respect does the work that Eunice did differ from the work that you did?

A. I think you could put it in a few words by saying she don't have to have any experience in the cutting room. A person can come in and give them a few little instructions, and tell them to follow out these little lines, and they can do it in a day or so. There is no experience attached to the job.

Q. Do you knew whether or not Eunice Usher has ever cut a complete garment or not?

(Testimony of Nolan Berteaux.)

A. I don't know anything about Eunice Usher, except she was just employed as a sloper there.

Q. You heard the testimony given by Vito this morning? A. Some parts of it.

Q. Were you in the court room all the time?

A. Not all the time.

Q. Now, none of the work that you do as a cutter is complete in and of itself, is it? I mean by that, when you finish your cutting operations, there is still work to be done on the garment before it is finished. Isn't that true?

A. It is true that you couldn't take it out and sell it in the store. That's right. But so far as the cutting is concerned, that is through. [249]

Q. Then it has to go to somebody else to be finished? A. Has to go to the operator.

Q. Has to go to the operator to be sewed together?

A. To be sewed together, assembled.

Q. If the garment is completed so far as the cutting is concerned when you are through with it, why is it necessary for Eunice or anyone else to slope it?

A. You see, the work that Eunice does, the sloping on this pleating, and so forth, it is usually done before I get the order to cut the dress, so when she does the sloping I drop it all in the bundle when I am through cutting, and it is sent to the assorter. In other words, Eunice, her little part of the work is just done on the outside. I don't cut the dress until she does the little sloping.

(Testimony of Nolan Berteaux.)

Q. Isn't it just the reverse of that, Mr. Berteaux? Don't you cut the garment first, and then doesn't it go to Eunice to be sloped?

A. The part of the work that Eunice works on, I don't have anything to do with it, I mean the cutting, and so forth. It is only the pleating, or something like that, which is done outside of the factory.

Q. How many times did Mr. Bothman ask you to come back to work?

A. Only that one time I stated.

Q. When was that? [250]

A. It was some time in September, I suppose. I don't know the exact date.

Q. Mr. Bothman didn't tell you that as long as you belonged to the union, he wouldn't take you back, did he?

A. Mr. Bothman didn't tell me that in no specific statement, but he made it very plain that if I did belong to the union not to even apply for the job.

Q. When did he make that plain?

A. In this conversation I had in September.

Q. What did he say?

A. He said he didn't want to have anything to do with any groups, I should come to work as an individual and not as a group, or not being represented by anybody else but myself. He said, "I want to deal with you, and nobody else."

Q. Were you present at the meeting on June 11th, when the subject of a raise was discussed?

(Testimony of Nolan Berteaux.)

A. I was.

Q. Did you take part in the conversation?

A. I don't recall saying anything.

Q. You didn't say anything? A. No.

Q. Did Vito say anything?

A. To tell the truth, I can't tell who said and who didn't say it, outside of Mr. Bothman. He did a lot of talking.

Q. Did you ask for the raise prior to that meeting? [251]

A. I had informed Mr. Lou Swartz what he wanted Mr. Bothman for before that, and I am pretty sure he had informed Mr. Bothman that was it.

Q. As I understand, the men had informed Mr. Swartz that they wanted a raise, and you said Mr. Swartz informed Mr. Bothman?

A. I only am thinking that. I am not sure.

Q. Are you working now?

A. No, I am not.

Q. Have you done any work since you went out on strike? A. No.

Q. Of any kind? A. No.

Q. Haven't earned any money at all?

A. No.

Q. Have you received any money from the union?

A. Have I received any money from the union?

Q. Yes. A. I received a loan.

Q. Of how much?

Mr. Nicoson: I object.

(Testimony of Nolan Berteaux.)

Trial Examiner Erickson: Sustained.

Mr. Shapiro: I think that is all.

Mr. Nicoson: That is all.

(Witness excused.) [252]

Trial Examiner Erickson: We will adjourn until 10:00 o'clock tomorrow morning.

(Whereupon, at 4:30 o'clock p.m., January 26, 1942, the hearing in the above entitled matter was adjourned until Tuesday, January 27, 1942, at 10:00 o'clock a.m.) [253]

[Title of Board and Cause.]

Room 808, United States Post Office and
Court House Building,
Spring, Temple and Main Streets,
Los Angeles, California,
Tuesday, January 27, 1942

The above-entitled matter came on for hearing, pursuant to adjournment, at 10:00 o'clock a.m.

[254]

Proceedings

Trial Examiner Erickson: The proceeding will come to order.

Mr. Nicoson: Louis Baliber.

LOUIS BALIBER,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Witness: Louis Baliber, B-a-l-i-b-e-r.

Q. (By Mr. Nicoson): Where do you live, Mr. Baliber?

A. 1606 South Shenandoah, Los Angeles.

Q. Have you ever been employed by the Lettie Lee Company? A. Yes, sir.

Q. When did you first begin working for them?

A. November 13, 1939.

Q. How did you happen to go to work for them?

A. Well, I filed an application in the office for a job, and then around in July, 1939 I was called by postal card, and I came and it was too late, the job was filled. Then around November 1939 Lou Swartz called me at my home, and I spoke to him over the phone, and we discussed the price, and all that. Then I went down to the place and I spoke to him, and he hired me.

Q. That is when you began working? [256]

A. Yes, sir.

Q. You have been working for them ever since?

A. Ever since.

Mr. Nicoson: Mark this, please.

(Thereupon the document referred to was marked as Board's Exhibit 12, for identification.)

(Testimony of Louis Baliber.)

Q. (By Mr. Nicoson) I hand you a card which, for the purpose of identification, has been marked Board's Exhibit 12, and ask you to examine it and state whether or not you know what it is?

A. This is a card that I signed in the union hall on the 21st of July.

Q. Is that your signature there?

A. Yes, sir.

Q. How did you happen to sign this card?

A. Well, I have been a union member before, but, oh, the boys said they wanted to see everybody sign a card, so I signed a card there.

Q. How long had you been a union member?

A. I have been a union member from New York; that is, 1926.

Q. Were you a union member when you went to work for Lettie Lee? A. Yes, sir.

Q. Was anything said to you at that time?

A. Nobody asked me anything. [257]

Mr. Nicoson: I offer this in evidence.

Mr. Shapiro: No objection.

Trial Examiner Erickson: It will be received.

(Thereupon the document heretofore marked as Board's Exhibit 12, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 12

I, the undersigned voluntarily designate the International Ladies' Garment Workers' Union as my sole representative in collective bargaining with my employer.

(Testimony of Louis Baliber.)

Date: 7/21/41

Name: Louis Baliber.

Address: 1482 S. Shenandoah St.

S. S. No. 082-09-2284.

Craft: Cutter.

Firm: Lettie Lee.

(Vuelta)

Union Label 111.

(Vuelta)

Q. (By Mr. Nicoson) Now, at this meeting at the union at which you signed that card, was there anyone else present from the Lettie Lee Company?

A. Yes.

Q. Who was present?

A. There was the rest of the cutters, Vito Cimarrusti, and Angelo Castello, Don Quinn, Nolan Berteaux, Joe Sardo and myself.

Q. Do you remember about a strike being called at Lettie Lee on July 24, 1941? A. Yes, sir.

Q. Were you present in front of the plant that morning?

A. Not exactly in front of the plant. When I came to work that morning, I saw the mass picket line on Los Angeles Street, so we had orders from the union officials in case we see the strike we should meet in a certain place. Well, we met on 7th Street in the Exchange Restaurant, and Joe Sardo and myself were standing in front of the restaurant.

Q. Did you see anyone there connected with the company?

A. I did a little—a few minutes later Lou

(Testimony of Louis Baliber.)

Swartz pulled [258] by with his car and he tooted his horn, and I turned around to see who it was, and it was Mr. Swartz, and he was across the street and he called me over.

So I went over to him, and he says, "Come on, get in the car and I will take you into the building. You don't have to be afraid."

I says, "Look, you better go see the rest of the boys. I am not going in without them." They was all in the restaurant. That was all that was said, and I walked away from him.

Q. Did you see Mr. Bothman that morning?

A. No, sir.

Q. Do you remember a meeting in the early part of June at which a raise was discussed among the cutters in the Lettie Lee plant? A. Yes, I do.

Q. Prior to that time did you have any discussion with Mr. Swartz concerning the union?

A. I did sometimes in April. He asked me a question. He used to be on the bowling team, and Mr. Swartz, myself and his brother-in-law, Mort Litwin, were sitting in the restaurant and eating. That restaurant is on Los Angeles Street, and he asked me the question. There was a rumor of the union at that time calling a strike, and he says to me, "Lou"—He called me "Louis"—he says, "Louis, what is your intention? Would you join the union or not?" [259]

I says, "Well, I will do what the rest of the boys will do."

Well, he didn't know I was a union man.

(Testimony of Louis Baliber.)

Then he says to me, "Will the boss or the union give you a living?" I didn't answer him to that respect. That was all that was said. In other words, meaning if you joined the union you are out of a job. That's the way I took it.

Mr. Shapiro: I move to strike the last portion of the witness' answer on the ground it calls for a conclusion.

Trial Examiner Erickson: "That's the way I took it" will be stricken.

Mr. Shapiro: Is it still our understanding that my objection goes to all testimony as to conversations between Mr. Swartz and any of these other persons not in the presence of an officer of the corporation?

Trial Examiner Erickson: Yes, throughout the entire hearing.

Mr. Shapiro: For the entire hearing?

Trial Examiner Erickson: Yes.

Mr. Shapiro: Thank you, your Honor.

Q. (By Mr. Nicoson) Have you since July 24th been offered reinstatement at Lettie Lee by anyone? A. No, sir.

Q. Has Mr. Bothman discussed with you the question of reinstatement? [260]

A. No, sir.

Q. Has he offered to reinstate you?

A. He never did.

Q. Has Mr. Swartz offered to reinstate you at any time since July 24th?

A. He never did.

(Testimony of Louis Baliber.)

Q. Have you had any discussion with any officer of the company concerning your reinstatement?

A. I did not.

Mr. Nicoson: That is all. You may cross examine.

Cross Examination

By Mr. Shapiro:

Q. You didn't tell Mr. Swartz, when you went to work in November of 1939, that you belonged to the union, did you? A. I did not.

Q. He didn't ask you, did he?

A. He did not.

Q. Mr. Bothman didn't ask you, did he?

A. Nobody did.

Q. It wasn't discussed at all, was it?

A. No.

Q. No one told you if you belonged to the union, you would not be hired? A. Well, I knew——

Q. Just answer that "yes" or "no." Did anyone tell you [261] that or not?

A. Some outsiders did.

Q. All right. But did anyone connected with Lettie Lee tell you that? A. No.

Q. Have you worked since you went out on strike on July 24th? A. No.

Q. Have you done any work of any kind?

A. No work whatsoever.

Q. Received any salary or compensation from any source?

A. No. I did get some money from the union, but not so long.

(Testimony of Louis Baliber.)

Q. Did you sign a note for it? A. Yes.

Mr. Nicoson: I object to that.

Trial Examiner Erickson: I will let the answer stand. He has answered.

Q. (By Mr. Shapiro) Is the answer "yes"?

A. Yes.

Mr. Shapiro: That is all.

Redirect Examination

By Mr. Nicoson:

Q. When you went to work for Lettie Lee, did you prior to that time talk to Mr. Bothman about going to work? [262]

A. When I received the postal?

Mr. Shapiro: Pardon me. I missed that question. Will you read it please?

(The question and answer were read.)

Mr. Shapiro: Thank you.

The Witness: At the time I received a postal, it was sometimes in July of 1939. When I went into the office, I asked for the job, and the job was taken. And it stated on the postal card to ask for Mr. Bothman, and the girl told me the job was taken. Then Mr. Bothman happened to come into the office and I spoke to him a few words, and he told me he would keep me in mind.

Q. (By Mr. Nicoson) At the time you went to work there, actually went to work, did you have a conversation with Mr. Bothman? A. No, sir.

Q. Only with Mr. Swartz?

A. Mr. Swartz is the one that hired me.

(Testimony of Louis Baliber.)

Mr. Nicoson: That is all. Thank you.

Mr. Shapiro: Nothing further.

Trial Examiner Erickson: Step down.

(Witness excused.)

Mr. Nicoson: Angelo Castella.

ANGELO CASTELLA,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Witness: My name is Angelo Castella, A-n-g-e-l-o C-a-s-t-e-l-l-a, 11602 Otsego Street, North Hollywood, California.

Mr. Nicoson: Mark that, please.

(Thereupon the document referred to was marked as Board's Exhibit 13, for identification.)

Q. (By Mr. Nicoson) I hand you a card which, for the purpose of identification, has been marked Board's Exhibit 13, and ask you to examine it and state if you know what it is.

(Handing document to witness.)

A. This is a card that I signed up in the union.

Trial Examiner Erickson: Speak up, please.

The Witness: This is a card that I signed up in the union hall with the rest of the cutters, Vito

(Testimony of Angelo Castella.)

Cimarusti, Lou Baliber, Don Quinn, Nolan Ber-teaux, and there was Harry Scott there, and I.

Q. (By Mr. Nicoson) Is that your signature there?

A. Well, my name is Angelo P. Castella.

Q. Well, is that your signature?

A. Yes.

Q. You wrote that? [264] A. Yes, sir.

Q. And that is the date you wrote that, 7-21-41; is that right? A. Yes.

Mr. Nicoson: I offer this in evidence.

Mr. Shapiro: No objection.

Trial Examiner Erickson: It will be received.

(Thereupon the document heretofore marked as Board's Exhibit 13, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 13

I, the undersigned voluntarily designate the International Ladies' Garment Workers' Union as my sole representative in collective bargaining with my employer.

Date: 7/21/41

Name: Angelo P. Castella.

Address: 11602 Otsego St., No. Holly.

S. S. No. 561-14-2782.

Craft: Cutter.

Firm: Lettie Lee.

Union Label 111.

(Vuelta)

(Testimony of Angelo Castella.)

Q. (By Mr. Nicoson) On June 11, 1941 were you an employee of Lettie Lee? A. Yes, sir.

Q. What were you employed as?

A. Cutter, sir.

Q. Were you an employee of Lettie Lee on July 24th? A. Yes, sir.

Q. Did you on that date join in the strike?

A. Yes, sir.

Q. Since July 24, 1941, have you been offered reinstatement to your former position by Mr. Bothman? A. Not that I know of, sir.

Q. Or by Mr. Swartz?

A. Not that I know of.

Q. What do you mean, "not that you know of"?

A. I haven't. [265]

Q. Have you talked to Mr. Bothman about reinstatement,—you, personally? A. No, sir.

Q. Have you talked to Mr. Swartz about reinstatement? A. No, sir.

Q. Have they talked to you about reinstatement? A. No, sir.

Q. Has any officer of the Lettie Lee Company talked to you concerning reinstatement since July 24, 1941? A. No one, sir.

Mr. Nicoson: That is all. You may cross examine.

Cross Examination

By Mr. Shapiro:

Q. When did you go to work for Lettie Lee?

A. I went to work for Lettie Lee in January, 1940.

(Testimony of Angelo Castella.)

Q. Who hired you?

A. Well, it was—I happened to go upstairs and I was talking to Lou a few weeks before—you see, I was out of work—to Mr. Lou Swartz, and he says, “Well, come around back right after the New Year, maybe. We will talk it over.”

So I was up in the hallway, and I rang the bell, and while I was waiting for Lou Swartz to come out, Mr. Bothman approached, and then he asked me, “What do you want?”

I says, “I am applying for a job as a cutter.”

And he says, “Are you a union man?”

And I says, “No. I worked for Mr. Markowitz next door.” [266]

Then Mr. Swartz, Lou Swartz, come in.

He says, “That’s all right.” Mr. Bothman says, “That’s all O. K. You can go to work,” because I had spoken to him before, and he put me to work right away.

Q. Did you have any other conversation with Mr. Bothman? A. No.

Q. Did Mr. Bothman tell you if you were a union man that he wouldn’t hire you?

A. No. The conversation was stopped right there, because Mr. Swartz come in, and I never spoke to him before.

Q. Did Mr. Bothman tell you if you did belong to the union he wouldn’t hire you?

A. No, he didn’t.

Q. Were you told by Mr. Bothman or anyone

(Testimony of Angelo Castella.)

else that if you joined the union you would be fired?

A. No, he did not.

Q. Are you working now? A. No, sir.

Q. Have you worked at all since you went out on strike on July 24, 1941? A. No, sir.

Q. Have you received any salary or compensation from any source?

A. I received a loan, sir.

Q. From whom? [267]

A. From the union.

Q. Did you sign a note for it?

A. Yes, sir.

Q. How much of a loan did you receive?

Mr. Nicoson: I object.

Trial Examiner Erickson: Sustained.

Mr. Shapiro: Nothing further.

Mr. Nicoson: That is all.

Trial Examiner Erickson: Step down.

(Witness excused.)

Mr. Nicoson: Joe Sardo.

A Voice: Joe is not here yet.

Mr. Vito Cimarusti: Sardo is not here.

Mr. Nicoson: May I have a minute here?

Trial Examiner Erickson: Yes.

(A short interruption.)

Mr. Nicoson: I find it necessary, your Honor, to ask for a recess until I can get in touch with Mr. Sardo and see what time I can get him here. He was supposed to be here this morning. He called me and said that he probably would be a little late,

but he assured me that he would be here around 10:30.

Trial Examiner Erickson: We will recess then until a quarter to 11:00, and if you need more time, you can then ask me. [268]

Mr. Nicoson: At this time may I get an answer to the subpoena for the payrolls of the company, so that I might be examining them during this period?

(The document referred to was handed to counsel.)

Mr. Shapiro: May I be excused then until a quarter of 11:00? Then I can go down to the bankruptcy court and see about a matter down there.

Trial Examiner Erickson: Yes, you may.

Mr. Shapiro: Let the record show that we have handed to counsel, pursuant to the subpoena, the payroll records of Lettie Lee, Inc.

Trial Examiner Erickson: The record will so show. We are in recess until a quarter to 11:00.

(A recess was taken.)

Trial Examiner Erickson: The proceeding will come to order.

JOE SARDO,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Nicoson:

Q. Will you state your name for the record?

A. Joe Sardo.

Q. Where do you live, Joe?

A. 2326 $\frac{1}{4}$ Carmone Avenue. [269]

Q. Have you ever been in the employ of the Lettie Lee Company? A. I have.

Q. When did you first go to work for them?

A. October 19, 1939.

Q. Have you been continuously employed by them up to the present time?

A. Yes, I have.

Trial Examiner Erickson: What was that question and answer, please?

(The question and answer were read.)

Mr. Nicoson: Mark this, please.

(Thereupon the document referred to was marked as Board's Exhibit 14, for identification.)

Q. (By Mr. Nicoson): I hand you a card which, for the purpose of identification, has been marked Board's Exhibit 14, and ask you to examine it and state if you know what it is?

A. It is a card I signed up at the union.

Q. Is that your signature? A. Yes.

(Testimony of Joe Sardo.)

Q. Is that the date on which you signed it, 7-21-41? A. That's right.

Mr. Nicoson: I now offer this in evidence.

Mr. Shapiro: I will object to the offer on the ground [270] that the witness has testified he is now employed by Lettie Lee, unless counsel wants to clear it up.

Trial Examiner Erickson: He can still belong to the union, can't he?

Mr. Shapiro: I suppose so, your Honor.

Trial Examiner Erickson: The objection is overruled. It will be received.

(Thereupon the document heretofore marked as Board's Exhibit 14, for identification, was received in evidence.)

BOARD'S EXHIBIT No. 14

I, the undersigned voluntarily designate the International Ladies' Garment Workers' Union as my sole representative in collective bargaining with my employer.

Date 7/21/41.

Name, Joe Sardo.

Address, 2326 $\frac{1}{4}$ Carmona.

S. S. No. 555-18-9957. Craft, Cutter.

Firm, Lettie Lee.

(Vuelta)

Union Label 111.

Q. (By Mr. Nicoson): Have you been in actual employment since July 24, 1941?

(Testimony of Joe Sardo.)

A. Have I what ?

Q. Have you been in actual employment?

A. No, I haven't.

Q. What happened on July 24th?

A. The strike was called by the union, and we didn't go back to work.

Q. You are still on strike?

A. That's right.

Mr. Nicoson: That is all. You may cross examine.

Cross Examination

By Mr. Shapiro:

Q. Are you working now?

A. No, I am not.

Q. Pardon me? A. Not active work. [271]

Q. What kind of work are you doing?

A. Waiting for the strike to be settled.

Q. Are you receiving any compensation or money from any source? A. Yes, sir.

Q. From what source?

A. From the union.

Q. Do you work for the union?

A. No. It is a loan.

Q. You signed a note for it?

A. No. They have taken our word that we will pay it back when we have it, I guess.

Q. You never signed any note for any money that they have given you?

A. Yes, we have signed for the loan, as we get it, how much we take.

(Testimony of Joe Sardo.)

Q. Have you received any remuneration or compensation from any source since you went out on strike, since July 24, 1941?

A. No, I haven't.

Q. What did you mean when you said that you are still employed by Lettie Lee?

A. Well, I haven't been fired. Nobody told me I am fired.

Q. But you went out on strike on July 24th?

A. That's right.

Q. And you haven't come back? Is that right?

[272]

A. That's right.

Q. Have you been convicted of a felony, Mr. Sardo?

A. Yes, I have.

Q. Where?

A. Does it make any difference?

Q. I think it does.

A. In Wisconsin.

Q. For what were you convicted?

The Witness: Do I have to answer that?

Trial Examiner Erickson: Yes.

The Witness: Grand larceny.

Q. (By Mr. Shapiro): Were you sentenced to serve time?

A. Yes, I was.

Q. What sentence did you receive?

A. 15 months.

Mr. Nicoson: 15 months?

The Witness: That's right.

Q. (By Mr. Shapiro): Did you serve the 15 months?

A. Yes, I did.

(Testimony of Joe Sardo.)

Q. Are you on parole now?

A. No, I am not.

Q. In what court were you convicted?

Mr. Nicoson: I think I will object to that. I don't see the materiality of that.

Trial Examiner Erickson: Objection sustained.

[273]

The Witness: Oh——

Mr. Nicoson: Never mind. You don't have to answer.

Q. (By Mr. Shapiro): While you were working for Lettie Lee, were you at the same time working any place else? A. No, I wasn't.

Q. Did you work nights any place else, other than at Lettie Lee? A. No.

Q. Who hired you, Mr. Sardo?

A. Mr. Lou Swartz.

Q. Did you ever talk to Mr. Bothman about your hiring—— A. No.

Q. ——or your employment? A. No.

Mr. Shapiro: That is all.

Redirect Examination

Q. (By Mr. Nicoson): Since July 24, 1941, has anyone offered to reinstate you at Lettie Lee?

A. No.

Q. Mr. Bothman or Mr. Swartz have not offered you reinstatement? A. No.

Mr. Nicoson: That is all. Step down.

Trial Examiner Erickson: Step down.

(Witness excused.) [274]

Mr. Nicoson: I call as an adverse witness, Mr. Sam Bothman.

Mr. Shapiro: Take the stand, Mr. Bothman.

SAM BOTHMAN,

called as an adverse witness by the National Labor Relations Board, having been previously duly sworn, was examined and testified further as follows:

Cross Examination

Trial Examiner Erickson: You were sworn?

The Witness: Yes.

Q. (By Mr. Nicoson): You are the same Mr. Bothman who has previously testified and has been previously sworn in this proceeding?

A. Yes, sir.

Q. I hand you a book, Mr. Bothman, and ask you to state, if you know, what it is?

A. A payroll book.

Trial Examiner Erickson: A payroll of what?

The Witness: Of Lettie Lee, Inc.

Trial Examiner Erickson: All right.

Q. (By Mr. Nicoson): I direct your attention to a page, at the top of which appears stamped on it by one of these rubber stamps the dates of July 4, 1941, July 11, 1941 and July 18, 1941, and on which appears in red pencil the word "Assorters" over a group of names, the word "Cutters" [275] over a group of names, and the word "Drapers" over a group of names, and ask you to state if you know what that is?

(Testimony of Sam Bothman.)

A. This is the names of the employees of Lettie Lee at that particular time.

Q. At that particular time. Is this not the payroll of those particular employees for that particular period?

A. It is, to the best of my knowledge.

Q. Directing your attention to the succeeding period, on which is stamped the dates of July 25, 1941, August 1, 1941, August 8, 1941, August 15, 1941, I will ask you whether or not that is the payroll for the same group of employees on those dates? A. It is.

Q. Now, if you will please turn over that last page I have just mentioned, on the back of that page you will find, also stamped at the top of the page, the dates August 22, 1941, August 29, 1941, September 5, 1941, September 12, 1941 but upon this page there appear no names. Can you tell me what that is, and how it could be explained?

A. If you will notice that this payroll is made so that they don't have to copy the names over here (indicating) so if you will fold it over like that (indicating), you will have your names running along in coherence with the names on the previous page.

Q. Then, as I understand it, for example, taking the name [276] of E. Begley, the first name which appears upon the first sheet which I have questioned you about, that name runs completely across that page and is continued on this last page

(Testimony of Sam Bothman.)

about which I am now talking to you, also on the first line? A. Just a moment.

Q. Would that be correct?

A. You said "Begley"?

Q. Begley.

A. Let's start on this line. Begley,—that is the first line, is it not?

Q. That is the first line.

A. That first line is completely blank, is it not?

Q. That is correct.

A. Then it remains blank all the way through, which means evidently she was not employed in that particular period.

Q. But if she had been employed in that particular period, the entries would have been made in the blank spaces in the blank line?

A. She would have had a pay period.

Q. And the entries would have been placed—

A. In that category, yes.

Q. —in the top line here, which now appears to be blank; is that right?

A. That's right. [277]

Q. So for the sake of office convenience, this last page about which I am now questioning you, by turning it completely over and comparing it with the names on the first page which I questioned you about, you will find there then the names corresponding to the entries on this third page? Am I correct about that?

A. Yes. As you are holding the page, you see, if you look at it from this angle, you have the names

(Testimony of Sam Bothman.)

completely across. Now, in order to make it very handy, this week is also included, you understand, and I mean if you hold it like this (indicating), you have the first week——

Q. That is right.

A. ——and then if you hold it like this (indicating), you have the complete roll. It is for the convenience of the office, not to have to copy the names over, is the only reason it is placed up there that way.

Q. And each line of the third page, or, rather, the back of page 2 is followed through from the names appearing upon the first page which I questioned you about? That is right, isn't it?

A. That's right.

Q. Now, I direct your attention also to the succeeding page, on which is stamped September 19, 1940. A. 1941.

Q. 1941. I am sorry. And September 26th—is it 26th? [278]

A. I think it is 26. It looks like it. It is very dull. It is either 25 or 26.

Q. 1941. That would be for the succeeding week after September 19th? A. That's right.

Q. Is that also a payroll? A. That's right.

Q. And that is constructed in the same manner as page 3? A. Correct.

Mr. Nicoson: Now, I offer these pages in evidence and ask permission to have them photostated and to return the originals to the company.

Mr. Shapiro: That is satisfactory, your Honor.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: That leave is granted. The exhibit will be received.

(Thereupon the documents referred to were marked as Board's Exhibits 15-A, B, C and D, and were received in evidence.)

Trial Examiner Erickson: When you have them photostated, be sure to make duplicates.

Mr. Nicoson: Duplicates?

Trial Examiner Erickson: Yes.

Mr. Nicoson: Thank you, your Honor.

Q. (By Mr. Nicoson): Now, referring to Board's Exhibit 15-A, which designates the first sheet which I questioned you about; 15-B, which is the second sheet which I questioned [279] you about; 15-C, which is the third sheet I questioned you about, and 15-D, which is the fourth sheet which I questioned you about; and directing your attention to 15-A and to the name appearing there of Kathryn Lembke, I will ask you to examine that and state whether or not that page indicates that Kathryn Lembke earned any pay during those three pay periods shown on that sheet?

A. No. That was a period evidently when she was on her leave of absence, which she takes every year.

Q. You would say then from July 4th up to and including the pay period including July 25th or 26th—

Trial Examiner Erickson: Isn't that September?

Q. (By Mr. Erickson): —I mean Septem-

(Testimony of Sam Bothman.)

ber 25 or 26, 1941, she earned no money; is that correct? A. That's correct.

Mr. Shapiro: What was that date in September?

Mr. Nicoson: From July 4, 1941 to September 25 or 26, 1941, whichever that figure is.

Q. (By Mr. Nicoson): Now, directing your attention to the name of Eda Goodal, I ask you to examine all four of those sheets and state whether or not she earned any money during that period or those periods? A. Eda Goodal?

Q. Yes.

Mr. Shapiro: Will you tell me, Mr. Nicoson, in what [280] capacity she is employed?

Mr. Nicoson: She was under the category of "cutters."

The Witness: None whatever.

Q. (By Mr. Nicoson): I will direct your attention to the name of Betty Latham, and ask you when that indicates that she received any pay, and for what periods? A. Where is that name?

Q. Here (indicating).

A. Betty Latham. Is this on this line (indicating)? This follows here?

Q. Yes.

A. The red line. It is the week of August the 1st, it started.

Q. Now, is that a pay period ending August 1st? Would that be right?

A. A pay period ending August the 1st, yes.

Q. But there is no entry for her on the pay period ending July 25th; is that right?

(Testimony of Sam Bothman.)

A. That's correct.

Q. According to these exhibits here, she then continued up to and ending on September 5, 1941? Would that be correct?

A. Have you got it on the third line?

Q. Yes.

A. Up until September 5, 1941.

Q. Thereafter, there is no showing that she earned any [281] money? A. That's right.

Q. Do you know whether or not she left the employ of your company at that time?

A. She did. Went back to school.

Q. Now, directing your attention to the next name underneath Betty Latham, on the fourth line of that section, there appears to be an Amillo Gates.

A. That's right.

Q. I will ask you to examine and state when he first began to draw a salary?

A. He is not on this one at all.

Q. How?

A. No, here is your date right here (indicating).

Q. That doesn't come out right, does it?

A. He is in the last line, Amillo Gates.

Q. It is the fourth line?

A. Yes, line No. 4, right there (indicating).

Mr. Nicoson: Did we speak of the fourth line?

The Reporter: Yes.

Q. (By Mr. Nicoson): Will you examine that and tell me when it was indicated that Mr. Gates went on the payroll?

(Testimony of Sam Bothman.)

A. The week of August the 15th.

Q. Do you know whether or not that was his first week of employment? [282]

A. That evidently was, because the payroll would indicate that.

Q. According to this payroll, he continues in service up to the present time; is that correct?

A. What date is this?

Q. Well——

A. No, it isn't up to this.

Q. I am sorry. Up to and including September 25 or 26, 1941? That is what this exhibit shows. Am I correct in that?

A. That's correct, up to that period only.

Q. Now, I next direct your attention to the next name, which appears to be David Arzolo. Is that the correct name? A. Yes, sir.

Q. I ask you to examine these four exhibits, and tell me when David Arzolo first began to draw pay with your company?

A. The week of August the 29th.

Q. 1941? A. 1941.

Q. The next name is D. Scherezer. I will ask you to examine these exhibits and state when he first began drawing pay from your concern?

A. The week of September the 19th.

Q. Now, what was Mr. Scherezer doing, do you know, when he was employed?

A. The capacity of his work? [283]

Q. Yes. A. He was doing cutting.

(Testimony of Sam Bothman.)

Q. He was doing cutting? A. Yes.

Q. And Arzolo, what did he do?

A. Cutting.

Q. And Gates?

A. Cutting. They are all under that heading of "cutters."

Q. Yes, I understand.

A. This entire group is cutters.

Q. When you say the entire group is cutters, you mean by that they are shown on this payroll?

A. No, they have all been that way.

Q. Well, we have a little dispute about that, as to whether or not they are cutters.

A. Not in my mind.

Mr. Nicoson: I know not in your mind, but in my mind there is, so we will watch the use of our terms, if you don't mind.

Mr. Shapiro: Well, whom do you object to on that list as not being cutters, Mr. Nicoson?

Mr. Nicoson: Well, I object to Kathryn Lembke, Eunice Usher, Eda Goodal, Dorothy Richard and Betty Latham under the category of cutters, and I object to all of the assorters. [284]

That is all.

Redirect Examination

Q. (By Mr. Shapiro) Will you look at this record, Mr. Bothman, and tell me what that record shows as to the number of cutters in your employ for the week commencing July 4, 1941?

Mr. Nicoson: I object to that. It calls for a

(Testimony of Sam Bothman.)

conclusion and is an ultimate factor to be found by the Board.

Trial Examiner Erickson: Read the question again, please.

(The question was read.)

Trial Examiner Erickson: You mean designated as cutters on the payroll?

Mr. Shapiro: Yes.

Trial Examiner Erickson: He may answer the question.

Mr. Nicoson: With that explanation, I will withdraw the objection.

Mr. Shapiro: That was the import of the question.

Mr. Nicoson: I didn't know that. I am not always sure of the import of your questions, so I have to have them clarified sometimes.

The Witness: Do you want me to count the names?

Q. (By Mr. Shapiro) Give us the number, and then read off the names.

A. There are 16 names listed under "cutters." However, [285] there are some of these names where the people did not work the entire period of time.

Q. Now, which of those——

Mr. Nicoson: Wait a minute. I move to strike the answer because the answer is not responsive. He asked him under a particular period how many were shown on that payroll, and while I think the

(Testimony of Sam Bothman.)

payroll is the best evidence, his answer is not responsive to the question.

Trial Examiner Erickson: All right. He asked you as of July 4th.

The Witness: As of July 4th?

Trial Examiner Erickson: Yes.

The Witness: Ten.

Q. (By Mr. Shapiro) All right. Did those ten work that entire period as cutters; that is, for the week commencing July 4th?

Trial Examiner Erickson: This is the week ending?

Mr. Shapiro: No. I thought it was—pardon me—the week ending July 4th.

Mr. Nicoson: I think I object to the use of the word “cutters” there.

Mr. Shapiro: Well, it is understood.

Trial Examiner Erickson: It is understood, yes.

Mr. Shapiro: You mean one thing, and I mean another.

Mr. Nicoson: All right. I just want the record to [286] show that I don't “give” on this question.

The Witness: Well, according to the records, we find for the 40 hour week, with the exception of Nolan Berteaux, who worked 38½ hours that week, the balance of them worked the full week.

Q. (By Mr. Shapiro) Now, who are the ten cutters that worked for your company for the week ending July 4th?

A. Louis Swartz, Vito Cimarusti, Mort, Eunice, Joe Sardo, Louis—

(Testimony of Sam Bothman.)

Q. Better read their last names too, Mr. Bothman. A. I can't pronounce them.

Q. Baliber.

A. —Baliber, Don Quinn, and Nolan Ber-teaux, and Dorothy Richard.

Q. All right. Now, will you explain how it happens that you have six additional names under the designation "cutters" for that same work period, who apparently were not working at that time? Will you explain that to the Court?

A. Well, let's see. We will start with the first, Kathryn Lembke, who was on a leave of absence at that particular time.

Q. All right. Now, taking Kathryn Lembke first, when did she leave on her leave of absence?

A. I will have to refer back to the payroll to find out exactly what date that is. [287]

Q. All right. Will you do that?

A. The last pay was on May 30, 1941.

Q. When did she return to her employment?

A. The week of October the 17th.

Q. Is she now in your employ? A. She is.

Q. In what capacity? A. As a cutter.

Mr. Nicoson: You understand I object to all of this characterizing?

Trial Examiner Erickson: Overruled.

Mr. Nicoson: May I have a continuing objection, please?

Trial Examiner Erickson: You may.

Q. (By Mr. Shapiro) Was she discharged or

(Testimony of Sam Bothman.)

was her employment terminated when she left in the latter part of May?

A. No, she took a leave of absence. Every summer she goes away for two or three months. She did it the previous summer. Because that is our dull season, as a general rule, and then she comes back and goes to work.

Q. When she left in the latter part of May, was it the understanding that she would be returned to her former employment as soon as her leave was concluded?

A. It certainly was, as in previous years.

Q. Now, with reference to the other persons listed as cutters, who did not work for that period, will you explain [288] where they were or what they were doing?

A. I don't quite understand the question.

Q. You have, for instance, Betty Latham, who appears here as a cutter, and it does not appear that she worked for the week ending July 4th. Is that correct?

A. Evidently, she wasn't working at that time.

Q. And has she worked since?

A. Let's see. Yes, she started to work on August 1, 1941.

Q. And is she still in your employ?

A. No.

Q. When did she leave your employ?

A. Let me see. I will have to check that date. The week of September the 5th, 1941.

(Testimony of Sam Bothman.)

Q. Now, what I want to find out, Mr. Bothman, is this: If these people weren't working during that work period, how does it happen that their names all appear here?

A. Because that is our steady employment list.

Q. I see. And as your employment or as your work increases, you put on more people; is that right?

A. That's right.

Q. And you draw from that list of your employees?

A. That's right.

Q. Now, calling your attention to the following work period, which would be the week ending July 11th, will you tell me what your records show as to the number of cutters in your [289] employ at that time?

A. July 11th?

Q. Yes.

A. Ten, ten cutters.

Q. And was Miss Lembke still on leave of absence at that time?

A. She was.

Q. By the way, is there a David Thain, who was a cutter in your employ?

A. There is.

Q. Where was he during these same periods of time that I am now questioning you about?

A. He was on a leave of absence in Texas.

Q. Has he since returned to work?

A. He has.

Q. And is he working now?

A. He is.

Q. In what capacity?

A. As a cutter.

Q. When did he leave on his leave of absence?

A. He went to help his mother——

Mr. Nicoson: I object to that. Let's see if the payroll shows it.

(Testimony of Sam Bothman.)

The Witness: Well, I will bring up the payroll previously to show that. [290]

Mr. Nicoson: I am going to stand on that. The payroll is the best evidence.

Trial Examiner Erickson: Does the payroll refer to him?

The Witness: Yes.

Trial Examiner Erickson: Then refer to the payroll.

The Witness: This particular one here doesn't.

Trial Examiner Erickson: Then give us your best memory.

Mr. Nicoson: You overrule my objection?

Trial Examiner Erickson: Yes. I told him to give his best memory.

The Witness: I think probably a year and two or three months ago, Mr. Thain came to me and told me he was going down to help his mother fix up the farm, and wanted to know if I would give him back his job when he came back. And I said, "Certainly, I will give you back your job when you come back."

So he left our employment at that time, and when he returned from Texas, he came and asked would I give him back his position, which I did.

Q. (By Mr. Shapiro) When did he return from Texas? Rather, when did you put him back to work?

A. The week of October the 24th, 1941.

Mr. Nicoson: What was that, please?

The Witness: October 24, 1941.

(Testimony of Sam Bothman.)

Q. (By Mr. Shapiro) And is he still in your employ? [291] A. He is.

Q. In what capacity? A. As a cutter.

Q. All right. Now, will you turn to that portion of the records which show the persons in your employ as cutters for the week ending July 18, 1941?

A. July 18th?

Q. Yes. A. Yes. Ten.

Q. And was Mr. Thain still on the leave of absence? A. He was.

Q. And Miss Lembke? A. She was.

Q. All right. How about the next week, which would be the week ending the 25th?

A. The week ending the 25th. Ten.

Q. And were the same two people, that is, Miss Lembke and Mr. Thain still on leave of absence?

A. They were.

Mr. Ryan: Mr. Examiner, I want to object to the respondent's classifying Thain as being on leave of absence. It is already indicated that he quit his job and came back and asked for another job, so he was not on leave of absence.

Trial Examiner Erickson: However he described it in the record will show the fact. [292]

Mr. Ryan: The record does not show the fact if he was carried as an employee however.

Trial Examiner Erickson: Does he show on the payroll here?

The Witness: Not here.

Q. (By Mr. Shapiro) Why doesn't he show on the record? The reason is that——

(Testimony of Sam Bothman.)

Mr. Nicoson: Don't you testify.

Q. (By Mr. Shapiro) Tell us why this record you have here does not show Mr. Thain's previous period of employment.

A. Because this is only the records of 1941.

Q. And when did Mr. Thain leave on his leave of absence? A. In 1940.

Q. Do your payroll records for 1940 show that?

A. That he is on that payroll?

Q. Yes. A. Certainly.

Q. And you have those to refer to?

A. Certainly.

Q. And will you bring those here this afternoon?

A. Certainly.

Trial Examiner Erickson: What about your testimony that all of your employees that are listed as cutters are shown on that payroll, and you draw from them as you need them?

The Witness: Well, when she transferred 1941—from [293] 1940 to 1941, she knew that Mr. Thain was still in Texas at that time, so she did not enter him on the 1941 book.

Trial Examiner Erickson: How do you know that?

The Witness: Because the girl knew that Mr. Thain happens to be the brother of Lettie Lee, who is the president of Lettie Lee, Inc.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) All right. Now, for the week ending August 1st, what do your records show

(Testimony of Sam Bothman.)

as to the number of cutters in your employ at that time? A. What date?

Q. August 1st. A. August 1st, five.

Q. And who are those cutters?

A. Louis Swartz, Mort Litwin, Eunice Usher, Dorothy Richard and Betty Latham.

Q. Now, for the week ending August 8th, what do your records show as to the number of cutters in your employ? A. Five.

Q. Are they the same five? A. They are.

Q. And for the week ending August 15th, what do your records show with respect to the number of cutters in your employ? A. Six.

Q. Will you name those, please? [294]

A. Louis Swartz, Mort Litwin, Eunice Usher, Dorothy Richards, Betty Latham and Argola Gates.

Q. With respect to the week ending August 22nd, what do your records show as to the number of cutters in your employ for that period?

A. August 22nd?

Q. Just a moment. Is that Amillo Gates that you referred to? A. No, Argola.

Mr. Nicoson: I think we said a while ago that that was Amillo, A-m-i-l-l-o. That is what it looked like to me. It is the same one?

The Witness: It is the same one. On August 22nd?

Q. (By Mr. Shapiro) Yes. A. Six.

Q. Are they the same six that you named to us previously? A. They are.

(Testimony of Sam Bothman.)

Q. With respect to the week ending August 29th, what do your records show?

A. August 29th. Seven.

Q. Who are those seven? Will you read them off?

A. Louis Swartz, Mort Litwin, Eunice Usher, Betty Latham, Amilla Gates, David Arzolo.

Mr. Nicoson: That is only six. You left out Richard, didn't you?

The Witness: Sir? [295]

Mr. Nicoson: You left out Richard?

The Witness: Dorothy Richard, yes.

Q. (By Mr. Shapiro) All right. For the week ending September 5th, what do your records show?

A. Seven.

Q. Are they the same seven that you have just enumerated? A. They were.

Q. And for the week ending September 12th, what do your records show? A. Six.

Q. And who are they?

A. The same, with the exception of Betty Latham.

Q. And for the week ending September 19th?

A. September 19th. Seven.

Q. Are they the same seven as you previously named? A. No.

Q. All right. Will you name them then?

A. Louis Swartz, Mort Litwin, Eunice Usher, Dorothy Richard, Amillo Gates—

Mr. Shapiro: Pardon me. Did you address some remark to me? You (indicating)?

(Testimony of Sam Bothman.)

Mr. Angelo Castella: No, sir.

Mr. Shapiro: I thought you said something under your breath.

Mr. Castella: I was talking to him (indicating).
[296]

Mr. Shapiro: You weren't looking at him. You were looking at me.

The Witness (Continuing): —David Arzolo, and D. Scherezer.

Q. (By Mr. Shapiro) All right. What do your records show with respect to the week ending September 26th?

A. Seven cutters. The same cutters that worked the previous week.

Q. That takes us through the month of September, I believe. A. That's right.

Q. All right. Now, six men went out on July 24th. Will you state to the Court whether or not you replaced those six men, either entirely or in part? A. In part.

Q. To what extent were they replaced?

A. To the extent that the payroll shows.

Q. That is one man. Then you show there that you had seven employees for most of this period?

A. Two of those are men.

Q. Yes. A. And the balance are women.

Q. What I want to know, Mr. Bothman, is when these six men went out on July 24th, how many persons did you employ or take on that were not working for your on July 24th?

A. You mean in the cutting department? [297]

(Testimony of Sam Bothman.)

Q. Yes, in the cutting department.

A. Well, you have Betty Latham, Miss Gates, David Arzolo, and this Scherezzer, who worked part time. They didn't work the entire period, but they worked certain weeks in that particular period that you mention.

Q. You never had as many cutters in your cutting department after July 24th as you had previous to that time; is that correct?

A. Correct.

Q. And why is that?

A. The business didn't warrant it.

Q. How many cutters do you have in your employ at the present time?

A. I will have to refer back to——

Q. All right.

Mr. Ryan: We object, of course, to the term "cutters" being applied to some of these individuals here whom we have already shown, I believe, are not cutters.

Trial Examiner Erickson: You have a running objection.

The Witness: As of the week of December 26th, that is the last record I have here at the present time, seven.

Q. (By Mr. Shapiro) Seven cutters?

A. That's right.

Q. And who are they?

A. Louis Swartz, Dorothy Richard, A. Gates, Kathryn Lembke, [298] Mort Litwin, Eunice Usher, David—no, strike that out, because they haven't

(Testimony of Sam Bothman.)

been working those two weeks, see. David Scherzer and David Arzolo have not been working for a few weeks. And David Thain.

Q. Now, so the record is straight, who were the seven working in the week ending December 26th?

A. David Thain, Eunice Usher, Mr. Litwin, Kathryn Lembke, A. Gates, Dorothy Richard and Louis Swartz.

Mr. Shapiro: Now, as you called Mr. Bothman as an adverse witness, I don't want to go into our case in chief. I don't think I want to question him any further at this time, reserving, however, the right to go into our defense.

Trial Examiner Erickson: Yes, you may do that.

Recross Examination

Q. (By Mr. Nicoson) Now, isn't it a fact, Mr. Bothman, that Miss Lembke works for somebody else during the summer?

A. She goes on a vacation up in—I don't really know exactly the spot, but she takes a leave of absence every summer and goes up to some resort.

Q. Goes up to Lake Tahoe, doesn't she?

A. I don't know the exact spot she goes, but last year it seems to me like she said she went to Catalina.

Q. Now, again showing you Board's Exhibit 15, with its subdivisions, and directing your attention to Betty Latham, what did Betty do when she was in there? Do you know? [299]

A. Betty Latham?

(Testimony of Sam Bothman.)

Q. That's right, if you know.

A. Yes, she was a cutter.

Q. What did she do as a cutter?

A. She cut dresses.

Q. Did she do all the operations that the men do?

A. Practically the same operations that the men do in our particular factory, yes.

Q. Will you explain to us then why Betty Latham was only receiving \$17.93, when the general salary for the men cutters appears to be \$45.08? Will you explain that?

Mr. Shapiro: Just a minute. That is objected to as incompetent, irrelevant and immaterial. The record will show that the women received less than the men.

Trial Examiner Erickson: That is overruled.

Q. (By Mr. Nicoson) I want to know why? That is what I am asking.

A. I will answer that. Because it is generally the practice of the entire market that the men cutters receive more salary than the lady cutters.

Q. Why is it the practice of the entire market for the men to receive twice as much as the ladies?

A. Your answer will be as good as mine.

Q. Well, do you know? A. I don't. [300]

Q. You don't. Will you also look at this exhibit and tell me whether or not Latham and Richard are on the same price level?

A. Latham and Richard?

Q. That is right. A. They are.

(Testimony of Sam Bothman.)

Q. They both normally draw \$17.93 for a full week; is that correct? A. Correct.

Q. Now? A. That's correct.

Q. And that same thing applies to Eda Goodal; is that true? A. Eda Goodal?

Q. Yes. A. Where is Eda Goodal?

Mr. Nicoson: She did not get on until October, I guess. Wait a minute.

I withdraw that question. That is all.

Redirect Examination

Q. (By Mr. Shapiro) How much does Eunice Usher receive? A. Eunice Usher?

Q. Yes. A. \$24.00 per week.

Q. How much does Kathryn Lembke receive? [301]

A. Sixty cents per hour. That is \$24.00 per week.

Q. Do Kathryn Lembke and Eunice Usher perform the same services that the males set out in your records as cutters do? In other words, do the women, those two women particularly, do they perform the same services as the men?

A. Practically the same thing.

Q. Well, in what respect is there any difference?

A. Well, in our factory we work on 1941 method of manufacturing. All our markers are made by one person.

Q. And who is that?

A. Well, I will retract. I will say one or two persons. The greatest percentage of our markers, I will put it that way because there are isolated

(Testimony of Sam Bothman.)

cases where someone else might make one or two markers. By markers, I mean we make carbon copies of the complete pattern. Now, these markers are made by either Mort Litwin or Lou Swartz. That is what we call our master markers. So it really only takes choppers in our factory. The general term, the cutting term "chopper" is to do the kind of work that these men that went out on strike were doing in our factory.

Q. Now, will you tell us what you mean by the term "chopper?"

A. The term "chopper" in the cutting industry is usually applied to a person that cuts out the material after a marker has been made.

Q. All right. Now, you were going to tell us in what [302] respect, if any, the work performed by Eunice Usher and Kathryn Lembke differs from the work performed by, let us say, the six men that went out on strike.

A. Well, naturally, they give the girls the smallest amount of actual labor to do, because carrying around heavy bolts of material is easier for a man than it is for a woman. The girls cut the trimmings from a marker, as a general rule. Sometimes it was necessary that they make their own markers for the trims, and sometimes these particular girls referred to cut full dresses, just the same as the boys did, and they cut samples, just the same as the boys did. Both are capable of making markers. One of them has ten years experience at cutting.

(Testimony of Sam Bothman.)

Q. Which one is that?

A. Eunice Usher. One of them probably has three to four years. I don't know exactly how long.

Q. Are their services interchangeable? I mean by that, have there ever been occasions when the girls took the place of the men and did their work, or the men took the place of the women and did their work?

A. They all do practically the same thing. There have been times when the girls cut out the full dress, but, generally speaking, they cut most of the trimmings. But there were plenty of times when there was no particular trimmings to cut, and, therefore, they cut a full dress, or [303] whatever the manager of the particular department had them to do. They were capable of cutting dresses. They were capable of making markers. They were capable of sloping, and they were capable of doing bundling, which in our particular factory is very essential, and it takes the knowledge of being a cutter to be a bundler.

Q. Will you explain why that is, Mr. Bothman?

Mr. Nicoson: I object to that.

Trial Examiner Erickson: He may answer.

The Witness: For the simple reason the bundler in our factory has to refer back to the pattern to mark where the operator sews. In fact, it is just as important that the dress be marked right, as it is that the dress be cut right, and marking up the dress is the duty of the bundler. She has to go to the pattern, take it down, and chalk mark and check

(Testimony of Sam Bothman.)

notches, and must have a knowledge of a dress before she can hold the job as a bundler.

Mr. Shapiro: I think if I continued along this line, we would naturally be getting into matters of defense, and I don't want to do that, as long as you haven't rested your case.

I don't think there is anything further now, Mr. Bothman.

Mr. Nicoson: I just want to ask you one further question. [304]

Recross Examination

Q. (By Mr. Nicoson) As I understand your testimony just now, you said from July on up until around the end of the year is a slack period. Isn't that what you said? A. What is that?

Mr. Nicoson: Read the question, please.

(The question was read.)

The Witness: No.

Q. Was it a good period?

A. It all depends on the line that you have. It all depends on the amount of business that you do.

Q. I am talking about the latter part of 1941 now. A. In the latter part of 1941?

Q. Yes.

A. It was considered only fair in our line, yes.

Q. I think you testified you only needed seven cutters. That is right? A. That's right.

Q. Now, I will show you Board's Exhibit 15, with its various subdivisions, and direct your attention to the name of Mort Litwin on 15-B. That first

(Testimony of Sam Bothman.)

figure for Mort Litwin for that week ending August 1st is 78. What does that represent?

A. Let me see what you are pointing out.

Q. 78. (Indicating). [305] A. 78 hours.

Q. Is that 78 hours during that week?

A. Yes.

Q. For which he received \$111.74?

A. Correct.

Q. So he worked a lot of overtime that week, didn't he? A. He did.

Q. Take the next week.

A. (Continuing) Because these other cutters were not working, they went on a strike, so we had to have somebody to cut the merchandise at that particular time.

Q. Thank you, sir. The same thing is true in the succeeding week, 74½ hours; isn't that correct?

A. Correct.

Q. For which he received \$105.68?

A. Correct.

Q. The same in the next week, 74 hours?

A. Correct.

Q. Drawing \$104.82,—correct?

A. Correct.

Q. And in the succeeding week he worked 69 hours, drawing \$94.25. Correct? A. Correct.

Q. The succeeding week he worked 71½ hours?

A. Correct. [306]

Q. Drawing \$100.49. That is right?

A. Yes.

Q. And in the following week, that would be

(Testimony of Sam Bothman.)

September 5th, he worked 66 $\frac{3}{4}$ hours and drew \$92.29? A. That's right.

Q. Correct? A. Yes.

Q. And in the week of September 12th he worked 69 hours and drew \$96.17. Correct?

A. Correct.

Q. And in the week of September 19th he worked 68 hours, drawing \$97.10. Correct?

A. Correct.

Q. And what was your normal work week?

A. 40 hours.

Mr. Nicoson: Thank you, sir. That is all.

Mr. Shapiro: Nothing further.

(Witness excused.)

Mr. Nicoson: Your Honor, I think I have finished.

Trial Examiner Erickson: You rest?

Mr. Nicoson: I wonder if you would mind taking noon recess at this time and let me make such last minute checks, as I would want to. I don't think I have anything further, but I would just like to check.

Trial Examiner Erickson: How much time do you think [307] you will take, Mr. Shapiro, for your defense?

Mr. Shapiro: Oh, I think the rest of the day and probably most of tomorrow.

Trial Examiner Erickson: All right. We will adjourn now then until 2:00 o'clock. We will be ready to go on at 2:00 o'clock.

Mr. Shapiro: And I assume that we had better be ready to go ahead with the defense at 2:00 o'clock?

Trial Examiner Erickson: Yes.

Mr. Shapiro: Counsel hasn't rested yet, as I understand it?

Mr. Nicoson: That is right.

Trial Examiner Erickson: That is right. We will adjourn until 2:00 o'clock.

(Whereupon, at 12:05 o'clock p.m., a recess was taken until 2:00 o'clock p.m.) [308]

After Recess

(Whereupon, at 2:00 o'clock p.m., the hearing resumed, pursuant to recess.)

Trial Examiner Erickson: The proceeding will come to order.

Mr. Nicoson: The Board rests.

Mr. Shapiro: At this time, if the Court please, I will move to strike from the record all of the testimony of all of the witness respecting any conversations between any persons and Mr. Swartz, not in the presence of or shown to have been made under the authority of any authorized representative, agent or officer of the respondent in this action, on the ground that all of such testimony is hearsay and not binding upon the respondent; on the further ground that there has been no foundation established for the admissibility of any of such evidence.

Trial Examiner Erickson: The motion is denied.

Mr. Shapiro: At this time, if the Court please, I will move the Court to dismiss the complaint in so far as it proceeds upon the theory that Local No. 84 is the representative of the cutters, for the reason that it affirmatively appears that the cutters are not a majority of the employees of Lettie Lee, that they are not a majority of the cutting unit, and for the further reason that it affirmatively appears that the cutters are not the appropriate [309] bargaining unit of Lettie Lee, Inc.

Trial Examiner Erickson: That motion is denied.

Mr. Sokol: I would like to call a witness before you call anyone, on behalf of the Union, if the Trial Examiner please.

Trial Examiner Erickson: You may, yes.

Mr. Sokol: Mr. Bothman.

SAM BOTHMAN,

a witness called by and on behalf of the International Ladies' Garment Workers' Union, Cutters Local No. 84 having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Sokol) Have you been sworn before? A. I have.

Q. Have you related what office you held with the company? A. No.

Q. What office? A. Secretary-treasurer.

Q. How long have you held that office?

A. Since the beginning of Lettie Lee, Inc.

(Testimony of Sam Bothman.)

Q. And when was that?

A. I will have to get the papers for the exact date. I don't know the exact date.

Q. Approximately? [310]

A. Approximately three years.

Q. Approximately three years ago?

A. Yes.

Q. In what month?

Mr. Shapiro: I submit, Mr. Examiner——

Mr. Sokol: I am testing his credibility. I want to show he is vague and indefinite with respect to his own business.

The Witness: Approximately, I think it was in the month of January, about three years ago.

Q. (By Mr. Sokol) Now, is that a California corporation? A. It is.

Q. Prior to that time you were in business, were you, in the same line?

A. No. Prior to that time I worked for Lettie Lee, not Lettie Lee, Inc.

Q. In what capacity?

A. As general manager.

Q. As general manager? A. Yes.

Q. When did you work as general manager for—well, now, before I into that: Was that a corporation?

A. It was a corporation when I first took the position, and later on it was changed to a private owner. Now, the exact dates I don't remember or recall. [311]

(Testimony of Sam Bothman.)

Q. Well, specifically, in the year 1936, were you employed by Lettie Lee?

A. In the year of 1936?

Q. Yes. A. Yes.

Q. Were you employed in the year 1937?

A. Yes.

Q. And 1938? A. Yes.

Q. All in the same capacity as manager?

A. There were about eight or nine months in that period where I was employed as a salesman only.

Q. Approximately when was that?

Mr. Shapiro: I submit, Your Honor, this is certainly not material to any issue in this case.

Trial Examiner Erickson: Let him proceed.

Q. (By Mr. Sokol) When was that eight or nine months when you were a salesman?

A. That was prior to the starting of the new Lettie Lee, Inc.

Q. Prior to January three years ago, you mean?

A. That's right.

Q. Well, when? When prior to it?

A. About eight or nine months prior to the—I mean, the eight or nine-months period prior to that. [312]

Q. I see. Now, you were general manager during 1936, 1937 and 1938? A. That's right.

Q. As such, did you have charge of the labor relations of the concern?

Mr. Shapiro: That is objected to as being incompetent, immaterial and irrelevant.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Overruled.

Mr. Shapiro: He is asking him as to his relationship prior to the time of this incorporation.

Trial Examiner Erickson: He still may answer.

The Witness: Will you repeat the question, please?

(The question was read.)

The Witness: Not fully, no.

Q. (By Mr. Sokol) In what respect did you have any control?

A. Merely as a consultant, because I was not the owner, and I at that time was merely managing. Miss Lee was the owner.

Q. She was the sole owner at that time?

A. In order for me to answer that exactly correct, we would have to refer back to all the records, because when Lettie Lee, Inc. was first established the stockholders were other people other than myself and Miss Lee. There was other people involved. And then later on Miss Lee bought out the other stockholders. [313]

Q. Now, let me ask you—

A. (Continuing) So at that particular time you are asking me, I am not sure whether the corporation—whether it was still a corporation or whether it was individually owned by Lettie Lee. I don't recall exactly during that period.

Q. Did it go under the name of Lettie Lee when you were manager?

(Testimony of Sam Bothman.)

A. I think it went under the name of Lettie Lee, Inc. when I first took the position on.

Q. As manager? A. That's right.

Q. All right. Now, do you recall an organization known as the Merchants & Manufacturers Association of Los Angeles?

Mr. Shapiro: That is objected to as being irrelevant, incompetent and immaterial, and not in issue in this case.

Q. (By Mr. Sokol) (Continuing) ——with whom you did business in 1936,—you, personally?

Mr. Shapiro: The same objection, Your Honor.

Trial Examiner Erickson: Overruled.

The Witness: Repeat that question again.

(The question was read.)

The Witness: I do.

Q. (By Mr. Sokol) Now, the Merchants & Manufacturers Association of Los Angeles is an organization, is it not, formed of employers allegedly to protect employers; is that [314] correct?

A. I do not know.

Mr. Shapiro: I will object to that question on the ground it is incompetent, irrelevant and immaterial, and not in issue in this case.

Trial Examiner Erickson: It is overruled.

Mr. Shapiro: May I have a running objection to this entire line of examination, Your Honor?

Trial Examiner Erickson: You may. The objection is overruled.

The Witness: Repeat the question.

(The question and answer were read.)

(Testimony of Sam Bothman.)

Q. (By Mr. Sokol) You don't know that?

A. I do not know.

Q. Well now, to shorten this name, Merchants & Manufacturers Association, I will refer to it as M & M from now on. With whom at the M & M did you converse or do business in 1936?

Mr. Shapiro: I would like to add to the objection the further ground that it is remote in point of time. We are back six years ago, Your Honor. This is 1942, and I can't conceive that the Court is very much interested in what organization this man belonged to in 1936, six years ago.

Mr. Sokol: It was after the passage of the Act.

Trial Examiner Erickson: The objection is overruled.

The Witness: Repeat the question. [315]

(The question was read.)

The Witness: I don't recall.

Q. (By Mr. Sokol) Would the name, C. R. Leslie, refresh your memory?

A. Not necessarily.

Q. Did you converse with the attorney of the Merchants & Manufacturers Association?

A. I might have. I don't recall. It is rather vague, because it has been quite a while ago, and I don't recall all the transactions that happened at that particular time.

Q. Let me go up to the present time at this time. During this strike you hired guards, didn't you, from the Woltman Bureau of Identification; is that correct?

A. Correct.

(Testimony of Sam Bothman.)

Q. Do you know Mr. Woltman? A. I do.

Q. Do you know that he was formerly connected with the Bodel Detective Agency?

A. I do not.

Q. You don't know that? A. No, sir.

Q. How did you get the services of Mr. Woltman? A. They were solicited.

Q. By whom? A. By Mr. Woltman. [316]

Q. Do you know Mr. Onthank, Fred Onthank?

A. I don't know him by name, no one by that name, that I know of. I don't know.

Q. Well, the man that handled that matter for the M & M?

A. I can't say that I know him.

Q. Well, are you positive you don't know Fred Onthank?

A. I am fairly positive, because I don't recall the name, yes, sir.

Q. Did Woltman come up himself?

A. That's right.

Q. Personally? A. That's right.

Q. Now, you hired those guards several days before July 24, 1941, didn't you, the date of the strike? A. I did not.

Q. The guards were there, weren't they?

A. Not under my supervision.

Q. Wasn't there a group formed of manufacturers; yourself, that is, Lettie Lee, Inc., William J. Markowitz, and other firms for this particular strike? A. Not that I know of.

(Testimony of Sam Bothman.)

Q. Didn't you cooperate with William J. Markowitz in the strike? A. About what?

Q. In the hiring of guards? [317]

A. I did not.

Q. Did you contribute—did you form any fund in this strike for guards or other services?

A. We did not contribute any money for guards in this strike at any time. We handled that individually. As far as I know, it was all handled individually.

Q. Then you didn't have a fund set up for that purpose? A. No, sir.

Q. And your company paid out—or, was your company billed directly by the Woltman Agency?

A. It was.

Q. Now, is it or is it not true that before July 24, 1941, you made preparations for the strike?

A. What do you mean when you say "preparations"?

Q. I will leave that up to you. Just preparations.

Mr. Shapiro: Then I will object to the question upon the ground that it is so vague and indefinite that the witness cannot be expected to know what counsel means.

Trial Examiner Erickson: I will sustain the objection.

Q. (By Mr. Sokol) All right. Did you know that a strike was to occur prior to July 24, 1941?

A. Did I know positively that a strike was to occur?

(Testimony of Sam Bothman.)

Q. Not positively. Did you know?

A. Not positively, no.

Q. But you had heard it? [318]

A. It was rumored, yes.

Q. And who told you?

A. Generally, on the market. I don't recall exactly.

Q. Name one individual that told you a strike was going to occur.

A. I can't recall any individual that told me that. It was a general rumor. That's all I can remember about that.

Q. You have talked to your employees, haven't you, before July 24, 1941?

A. Certainly, I have talked to my employees. I talk to my employees every day.

Q. And you talked to them about the International Ladies' Garment Workers' Union, didn't you?

A. If they asked me about it, naturally, I talked to them.

Q. Who asked you about the International Ladies' Garment Workers' Union prior to July 24, 1941?

A. I don't recall exactly who asked me.

Q. Whom did you talk to about the International Ladies' Garment Workers' Union prior to that date?

A. I don't recall who I talked to in reference to that.

Q. Well, look at your employees. You have got

(Testimony of Sam Bothman.)

several employees here in the room. Maybe that will refresh your memory. They are sitting in the courtroom. Now, tell the Trial Examiner if you discussed with any of your employees the International Ladies' Garment Workers' Union or the [319] Cutters Local, particularly, prior to July 24, 1941.

A. Did I do what?

Q. The reporter will read the question.

(The question was read.)

A. I don't think I ever referred to the International Ladies' Garment Workers' Union in that sense of the word. I might have spoken to the Cutters and asked them if they belonged to the Union.

Q. Which Union did you have reference to?

A. The International Ladies' Garment Workers' Union, A. F. of L.

Q. And when did you talk to your employees concerning that matter?

A. Oh, it might have been two or three weeks before the strike. It might have been a month before the strike.

Q. Did you talk on a number of occasions?

A. Yes, on a number of occasions. I was sometimes asked, and we discussed it.

Q. And sometimes you asked, didn't you?

A. No. I never went around and made an issue of that particular thing.

Mr. Sokol: I move to strike that as not responsive.

Mr. Shapiro: I think it is responsive.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: The motion is denied.

Q. (By Mr. Sokol) Now, can't you tell the Trial Examiner [320] the name of one of your employees that you discussed that matter with?

A. You mean before the strike or after the strike?

Q. Any time. Let's make it generally.

A. Yes, the six cutters. I said to them, "Do you,"——

Q. When was this now? Let's get the date.

A. Well, the exact date I can't give you.

Q. What year? A. 1941.

Q. What part of the year?

A. Prior to the strike.

Q. Where did this occur?

A. In the cutting room.

Q. Of your plant? A. It did.

Q. All right. Now, we are going back to 1936 again. Do you remember the organization known as the Southern California Garment Manufacturers Association? A. Yes.

Q. Who formed that organization? I mean, who was the attorney for it?

Mr. Shapiro: That is objected to as being incompetent, irrelevant and immaterial.

Trial Examiner Erickson: It is overruled.

The Witness: I think—— [321]

Q. (By Mr. Sokol) C. R. Leslie?

A. Yes, I think Mr. Leslie was.

Q. The attorney for the Merchants & Manufacturers Association; am I correct?

(Testimony of Sam Bothman.)

A. I don't know his exact capacity over there, but C. R. Leslie is the one.

Q. Of the M & M? You know that, don't you?

A. I know he is connected with the M & M, but how, I don't know.

Q. Now, at that time you formed a group, didn't you, of manufacturers who were opposed to Unions? Isn't that right?

A. That's not right.

Q. Are you positive of that fact?

A. Yes.

Q. Let me ask you: Who were the members of that organization?

A. I don't recall.

Q. Was William J. Markowitz a member?

Mr. Shapiro: Your Honor, I know I have a continuing objection, but I do want to point out to the Court that I don't think it is within the scope of this examination or hearing to go into the entire political or social background of this man. He still has some rights. He can still associate and confer with other people, and to require him to testify as to what organizations he belonged to six years ago, and who the other members of the organization were [322] certainly seems to me to be going very far afield. I don't want to be captious about the thing, and I want a full disclosure of all of the facts, but I do think there should be a limit beyond which Mr. Sokol is not permitted to go, and he is certainly going back into history.

Trial Examiner Erickson: Well, I had in mind that he was going into some background that would assist the Board in making a final determination of

(Testimony of Sam Bothman.)

the issues in this case, but if you think he is not, I will ask Mr. Sokol now before he proceeds to state on the record the purpose of this examination.

Mr. Sokol: I intend to show that the witness signed an agreement that if he ever recognized a Union he would forfeit \$5000.

Trial Examiner Erickson: You may proceed then.

Mr. Shapiro: Why not produce the agreement and let's have it out. Why are we beating around the bush?

Mr. Sokol: I will develop it. I will let you have it. I want to show how clear his memory is.

Q. (By Mr. Sokol) You do know that you joined the Southern California Garment Manufacturers Association? You know that much?

A. Yes, sir.

Q. Now, do you know the names of any of the members?

A. I don't recall the names of any of them. I probably [323] would if my memory was refreshed. I can't recall all of them. There was a group there.

Q. Tell us the names of those that you do recall.

Well, we will save time. I will show you what purports to be the minutes of some of these meetings. I will show you here what purports to be the minutes of the Southern California Garment Manufacturers Association, Inc. for September 23, 1936.

(Handing document to witness.)

Mr. Shapiro: I am going to object to counsel showing that to the witness, or reading from it into

(Testimony of Sam Bothman.)

the record, or offering it into evidence, until it has been properly identified.

Trial Examiner Erickson: Maybe the witness can identify it. Let him proceed.

Mr. Shapiro: I think we should have the foundation first.

Mr. Sokol: It is merely for the purpose of refreshing his recollection.

Trial Examiner Erickson: I understand.

The Witness: Well, it gives you some names. You can certainly see it.

Q. (By Mr. Sokol) All right. Now, after you have read that, tell us the names of some of the members.

A. There are some of them there. [324]

Q. All right. Will you tell us?

A. Lutz.

Q. Who is first?

A. Yes. Bothman. Lutz—

Q. Who is Lutz? What concern was he with?

A. Lutz was with Marjorie Montgomery, I think, at the time.

Q. In your building?

A. At that particular time whether he was in our building or out in the other building, I am not sure. Goldberg.

Q. Yes. With what concern was he?

A. That is Gene Goldberg, the Gold Dress.

Q. In your building? A. Yes.

Q. Markowitz?

A. Yes, William J. Markowitz.

(Testimony of Sam Bothman.)

Q. In your building? A. Yes.

Q. Hunt?

A. No, not in our building.

Q. He was a member of the organization, was he? A. Yes.

Q. Jaffee?

A. I don't recall that gentleman.

Q. You don't recall him? [325] A. No.

Q. Well, now, those are a few of the members. Now, you know that Markowitz has never signed a contract with a Union? You know that, don't you?

A. Well, I have heard that he hasn't recently. I don't know previous to that.

Q. And you have never signed a contract with a Union? A. That's right.

Q. Now, do you recall that your organization drew up by-laws and a constitution?

A. Yes, it seems to me like we did.

Q. All right. Let me show you here—I will have this marked for identification.

Mr. Sokol: I would like to have this marked as Union's Exhibit No. 1 for identification.

(Thereupon, the document referred to was marked as Union's Exhibit No. 1 for identification.)

Q. (By Mr. Sokol) I am referring now to part 64 of the Senate Civil Liberties Committee Report, part 64, supplementary exhibits on Cabinet & Store Fixtures Association of California, and also on Southern California Garment Manufacturers As-

(Testimony of Sam Bothman.)

sociation, and others. I am referring specifically at this time to the minutes on page 23346.

I show you what has been marked for identification as [326] Union's Exhibit No. 1. You have read the minutes for September 23, 1936. Do you recall those minutes?

Mr. Shapiro: You mean, at that meeting?

Q. (By Mr. Sokol) Yes, were you present at the meeting? A. I probably was.

Q. And are those the minutes?

A. I couldn't say that for sure.

Q. As far as you know, are those the minutes?

A. They could be.

Q. Now, I show you on the same page the minutes for September 30, 1936. It appears that you were present there too. Is that right?

Mr. Shapiro: If I understand you correctly, Mr. Sokol, there is a transcript of the proceedings had before a Senate investigating committee?

Mr. Sokol: That is right.

Mr. Shapiro: This does not purport to be the original record of any minutes of the meeting?

Mr. Sokol: No, a copy, a true copy I think, of the original which was returned.

Mr. Shapiro: The original having been produced presumably off the Senate hearing?

Mr. Sokol: That is right.

Mr. Shapiro: I am going to object to counsel's interrogating the witness from that record, Your Honor. It is not the best evidence or any kind of evidence of anything. [327]

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Well, let's hear what the witness has to say about that. If he has a memory about these matters, that will probably be better than the official records themselves.

The Witness: I can't recall this.

Q. (By Mr. Sokol) Well, you were president of the organization, weren't you?

A. I know, but I still can't recall what went on.

Q. Well, let's get that clear. Were you president?

A. It seems to me like I was elected president, yes. Then I went out on the road, and this is very vague to me, because I went out selling after that.

Q. Wait a minute. You said you went out selling the nine months prior to January, 1939, didn't you?

A. But I was selling all the time. I was selling all the time, but I was in the capacity of manager up to that time.

Q. But don't these minutes reflect——

A. (Continuing) Up to that period. Then I went out of Lettie Lee as a manager and took the sole job as a salesman.

Q. All I am asking you, Mr. Bothman, is for your memory of these events.

A. I can't recall.

Q. Your name is in all of these minutes?

A. That's right. [328]

Q. And yet you can't tell whether or not you were present or whether or not these are the minutes?

(Testimony of Sam Bothman.)

A. I can't recall the exact things that went on in those meetings. No, I can't.

Q. Who was the secretary?

A. I don't even recall that.

Q. All right. What was the organization formed for?

Mr. Shapiro: Now, we are not talking about another organization?

Mr. Sokol: No, I am talking about the Southern California Garment Manufacturers Association.

Mr. Shapiro: Yes. Sometime previously, when I made my original objection, we were talking about the Merchants & Manufacturers Association. I assume my objection goes to all of this line of questioning, Your Honor?

Trial Examiner Erickson: Yes, you may have that objection continuing. It is overruled.

The Witness: What was the question?

(The question was read.)

The Witness: To the best of my knowledge, for the exchange of various types and kinds of help in the industry, in our particular industry.

Q. (By Mr. Sokol) You mean employees, as an employment bureau? [329]

A. Somewhat, yes.

Q. What else was it formed for?

A. I can't recall exactly what all the reasons were for it. However, that is vague. Even that part is vague to me.

Q. Now, we want to get the facts, Mr. Bothman. Was it an employment agency, or wasn't it?

(Testimony of Sam Bothman.)

A. Partially.

Q. All right. Now, where did you have an employment office?

A. We never opened an office, but we exchanged help among ourselves.

Q. Among these firms?

A. That's right.

Q. What else did you do in that organization? Anything else that you recall?

A. Not particularly, no.

Q. All right. Now, do you recall that each member or firm signed a contract, each member of the organization, Southern California Garment Manufacturers Association, signed a mutual agreement between themselves?

A. It seems to me like there was. I don't recall whether they were signed or not. It seems to me like there was an agreement supposed to be made up, but I don't know whether they were signed up or not. I really don't remember. I [330] can't recall.

Q. Did you have any hand in the drafting of the agreement?

A. It seems to me like the entire group had a hand in the drafting of the agreement.

Q. Were you present?

A. I probably was present at some of the meetings, yes.

Q. And there was a discussion concerning the agreement?

A. Wages, and hours, and such, yes, as I recall. I recall a wage and hour discussion.

(Testimony of Sam Bothman.)

Q. I show you what purports to be that agreement. When was that agreement drafted?

A. I don't recall the time.

Q. 1936, '37 or '38?

A. I don't recall. Frankly speaking, I wouldn't remember.

Mr. Sokol: I will have this marked for identification as Union's exhibit next in order.

(Thereupon, the document referred to was marked as Union's Exhibit No. 2 for identification.)

Q. (By Mr. Sokol) Page 19353 of La Follette Report 52 of the Senate Civil Liberties Committee Reports, acting pursuant to Senate resolution 266, has been marked Union's Exhibit 2, for identification. I show you that page, and what purports to be that agreement, and ask you if that is the agreement which you drafted, which you helped to draft.

Mr. Shapiro: I haven't seen any of these documents, [331] Counsel, and will you tell me this: Do any of them purport to be executed on behalf of Lettie Lee, Inc.?

Mr. Sokol: Well, let's see what the answer is.

Mr. Shapiro: I would like to have an answer to that question. You haven't shown me the courtesy of an examination of the document.

Mr. Sokol: I am not going to tell you what our evidence is going to be. I am waiting for the testimony of this witness, and I will have other witnesses.

(Testimony of Sam Bothman.)

Mr. Shapiro: Then I will object, if the Court please, whether it is claimed or whether that record purports to show if it was executed by Mr. Bothman, if it was executed individually——

Trial Examiner Erickson: I am depending on the statement made by Mr. Sokol in receiving this evidence, that he intends to show that they entered into a contract that if he ever recognized a Union he would forfeit \$5000. I understand he is leading up to that.

Mr. Shapiro: My question is this: I want to know whether Mr. Sokol claims or whether that pamphlet there shows that any contract purportedly was entered into by Lettie Lee, Inc., or whether or not the contract he is talking about, if there was such a contract, and I know nothing of that, whether it was executed by Mr. Botham individually.

Trial Examiner Erickson: I would rather hear that from [332] Mr. Bothman. Then, Mr. Sokol, you may answer the question.

The Witness: What was that question again?

Trial Examiner Erickson: Read the question, please.

(The question was read.)

Mr. Shapiro: That is objected to upon the ground it assumes a fact not in evidence, that he helped to draft it. He didn't so testify.

Trial Examiner Erickson: He said he attended some meetings when it was drafted. I don't know what he means by that. He may answer the question.

(Testimony of Sam Bothman.)

(The document was examined by the witness.)

Q. (By Mr. Sokol) So that there won't be any confusion, how far have you read now?

(Witness indicating.)

Q. You have read through paragraph seven on page 19354 of this report. Now, up to this point does that appear to be the agreement which was drafted?

A. I can't tell for sure. I am trying to remember what was done and what was said.

Q. Well——

A. If you don't mind, Mr. Sokol, I would like to read this. So just be seated until I get through.

Q. I want to see what part of that you recall. Do you recall any part of what you have read up to now as being the part that was drafted at the time you were present? Just [333] answer that question. Will you answer that question? I don't want to go through the whole thing. I don't know whether you were present at all the meetings or not.

A. That is what I am trying to recall.

Q. Well, up to paragraph six on that page, do you recall that as being the substance?

A. I recall discussions in reference to some of these items mentioned here, but whether I was present at all, I do not know, see. I can't tell you for sure. I wasn't secretary of this organization, and

(Testimony of Sam Bothman.)

I didn't write this up, so, therefore, I can't tell you for sure.

Q. You recall discussions on all those items?

A. Up to the few things I have read so far, yes.

Q. Now, did you subscribe to those matters? Did you approve drafting the agreement up to that point? A. Up to what point?

Q. The point where you have read, up to paragraph six on page 19354?

A. Counsel, I would like to read this——

Mr. Sokol: I object to that.

The Witness: (Continuing) ——because it is a little confusing, and I don't know just exactly what he is referring to. Do you mind if I read this?

Trial Examiner Erickson: We will recess until 3:00 o'clock to give him an opportunity to read it.

[334]

Mr. Shapiro: Is there going to be any argument about my looking at it too?

Mr. Sokol: No. You can look at it too.

Trial Examiner Erickson: You can take it over to the counsel table, if you wish. We will be in recess.

(A recess was taken.)

Trial Examiner Erickson: The proceedings will come to order.

Mr. Shapiro: Your Honor, during the recess I called my office, and I am advised by my secretary that our file shows that Lettie Lee, Inc. was incorporated on January 19, 1939. This defendant or this respondent had no existence in law, or otherwise,

(Testimony of Sam Bothman.)

prior to that date, and I think that in view of that fact, this is a date which goes back to 1936, this is certainly entirely immaterial.

Trial Examiner Erickson: You mean technically?

Mr. Shapiro: I think technically, legally and every other way, your Honor. In the first place——

Mr. Sokol: Well, remember, Sam Bothman, Mr. Bothman, is on the stand. He is the one whom I am directing this to, who is in charge of the present labor relations of the present company, and I want to show what he stands for. It is not an inanimate object that we are dealing with.

Mr. Shapiro: It is not a question of what Mr. Bothman stands for. Or, let's assume that is the question. The question is: What does he stand for? [335] Not what he stood for six years ago. What is the limit to which Mr. Sokol can go? If he can go back six years, why can't he go back 10 years or 20 years?

Trial Examiner Erickson: Maybe he can.

Mr. Shapiro: Maybe he will. I think that is the evil of your inquiry. We have got to stop somewhere.

Trial Examiner Erickson: The objection is overruled.

Q. (By Mr. Sokol) Mr. Bothman, have you now read the agreement referred to as Union's Exhibit 2, for identification? A. I have.

Q. Was that the agreement which was drafted

(Testimony of Sam Bothman.)

by the Southern California Garment Manufacturers Association while you were present?

A. As I recall, there are some things in there that were discussed. As to the agreement, I am not sure as to exactly what the agreement was. Some of those things in there were discussed at our meeting.

Q. Was paragraph one on page 19353 of that report discussed? A. I think so.

Q. Was paragraph two, with the number two?

A. I don't recall for sure.

Q. But you do recall paragraph one?

A. I recall this one here (indicating), yes. I don't recall for sure that one (indicating). [336]

Q. Now, paragraph three. Was it discussed?

A. It seems to me like it was, yes.

Q. Was paragraph four discussed?

A. I am not positive of it. However, it could have been.

Q. It could have been. Now, what makes you say you are not positive?

A. Because this is six years ago and I am not positive. This is a long time hence.

Q. Let's see now. You know that paragraph three was discussed?

A. Which was paragraph three again?

Q. You just read it (indicating).

A. I really can't be positive that I can remember definitely anything that was discussed. Only generalities is all I can really remember.

(Testimony of Sam Bothman.)

Mr. Sokol: May I be permitted to read paragraphs one, two, three and four?

Trial Examiner Erickson: Mr. Sokol, I think you can shorten this by asking Mr. Bothman if he signed any agreement.

Q. (By Mr. Sokol) Do you have the agreement now? A. I do not.

Q. Did you sign an agreement?

A. I don't recall that we ever signed one, no. I don't recall that I ever signed an agreement.

Q. Didn't you instruct C. R. Leslie, the attorney for the [337] M & M, to draw the agreement?

A. I don't recall doing that, no.

Q. Is it that you don't recall—well, you have said that on a number of occasions here this morning. All I am asking you is this one thing now, and—

A. You asked me—

Q. —you were president of the organization, and did you tell C. R. Leslie to draw that agreement, Union's Exhibit 2, for identification?

A. I don't recall that I did. If you will ask me something that happened within the last year or last year and a half, it will be very plain in my mind, but when you ask me something that happened six or seven years ago, I can't remember.

Mr. Shapiro: May I point out that the copy in the record does not purport to bear any signature, and it is undated, and there is no reason to assume it was ever signed.

(Testimony of Sam Bothman.)

Q. (By Mr. Sokol) All right. Did you discuss paragraph three? A. I don't remember.

Q. Now, let me ask you: At that time wasn't the International Ladies' Garment Workers' Union seeking to organize Lettie Lee, at the time of this discussion of this agreement?

A. I don't recall whether they were or not at that particular time. [338]

Q. Don't you remember that you discussed the question of banding together so that you would not have a Union in the plant?

A. No, I can't recall exactly what happened at that particular time. That has been six or seven years ago, and I don't remember. My mind is pretty well taken up with sales, in running the factory, in various other things, so that I don't remember going through what you are saying that I should remember there.

Q. You paid out some money, didn't you, for the firm, for the work of this Southern California Garment Manufacturers Association? You put up a little money, didn't you?

A. I don't recall exactly what that amounted to either.

Q. As a matter of fact, there was a strike going on at that time, wasn't there?

A. I don't know.

Q. You don't remember hiring under-cover agents?

A. At that particular time that you are referring to?

(Testimony of Sam Bothman.)

Q. Yes.

A. No, I don't recall that at that particular time.

Q. You have hired under-cover agents, haven't you?

A. What do you call "under-cover agents?"

Q. You don't know what the term means?

A. What do you mean when you say "under-cover agents?"

Q. Detectives for the purpose of finding out activities [339] among the employees.

A. I have never hired one for that purpose.

Q. Do you know Nelson Wolfe? A. Who?

Q. Nelson Wolfe? A. Nelson Wolfe?

Q. Yes, Nelson Wolfe, W-o-l-f-e?

A. I can't say that I do know Nelson Wolfe.

Q. Do you know Violet Tatum?

A. Yes.

Q. Now, do you know Nelson Wolfe?

A. Do you mean her husband?

Q. Yes. A. Yes.

Q. What part did he play in this?

A. In what?

Q. In the Southern California Garment Manufacturers Association?

A. It seems to me like he was a member in that particular organization.

Q. Wasn't he the contact man? Didn't he have the money?

A. I don't recall that. I wouldn't remember.

(Testimony of Sam Bothman.)

Q. Well, do you even remember William F. Hynes? A. Do I remember him?

Q. Yes. [340] A. William F. Hynes?

Q. Captain Hynes?

A. Oh, of the Red Squad you are referring to?

Q. Yes. A. Yes, I do.

Q. Did you give him any money?

A. No, sir.

Trial Examiner Erickson: I will now sustain the objection made by counsel for the respondent.

Mr. Sokol: Well, Your Honor, I wanted to get a subpoena for Mr. Leslie, who drafted this agreement.

Trial Examiner Erickson: Make your application.

Mr. Sokol: Yes, I will make the application.

Mr. Shapiro: At this time I move to strike all the testimony preceding your Honor's ruling, with reference to all these prior matters, on the grounds previously stated in support of my objections to the introduction of the evidence, Your Honor.

Trial Examiner Erickson: That motion is denied.

Mr. Sokol: There is only one more thing I want to finish up in connection with this Association and that is:

Q. (By Mr. Sokol) Will you look at this list and state whether or not that was the list of members of the Association, right here (indicating) of the Southern California Garment Manufacturers Association? [341]

(Testimony of Sam Bothman.)

A. I think some of them were. However, I am not sure as to the exact list.

Q. Now, reading that list, will you state which were the members, as best you recall?

A. I recall Mr. Lutz of Marjorie Montgomery, and I recall Hunt, Broughton & Hunt, Mr. Hunt, and I recall Violet Tatum, I think, William J. Markowitz and that's all I recall of that group.

Q. And none of those firms have ever recognized the Union; is that correct? A. I don't know.

Q. Now, do you recall the dates, or approximate dates, or any meetings with the cutters, in which you spoke to them concerning wages, hours, or working conditions, in 1941?

A. Do I recall the exact dates?

Q. Approximately.

A. I recall discussing wages with the cutters on two occasions. The exact dates I can't give you. However, I do think they were about a week apart. It seems to me like they were about a week apart.

Q. In what month.

A. Let's see. It might have been in June. I am not sure.

Q. At that time you knew the International Ladies' Garment Workers' Union, didn't you?

A. State that again. [342]

Q. The Cutters Local. You knew there was a Cutters Local in the city?

A. An individual Cutters Local?

Q. The Cutters Local?

A. I had heard that there was——

(Testimony of Sam Bothman.)

Q. And you had heard it from——

A. (Continuing) ——a Union A. F. of L., but I knew nothing about a Cutters Local.

Q. Now, you called your cutters together?

A. No. My cutters sent for me.

Q. They sent for you? A. Yes.

Q. And you met them in the cutting room?

A. That's right.

Q. Which of the cutters sent for you?

A. Mr. Lou Swartz came and told me that the boys wanted to talk to me about a raise.

Q. Did you grant a raise? A. I did.

Q. What was the raise?

A. I gave them their choice as to whether or not they wanted me not to put on another boy, so that they could get their overtime as time and a half in the event that we didn't, or whether they wanted a 15-cent an hour raise. I gave them their own choice, and they took the 15-cent an hour raise. [343]

Q. And that applied only to the cutters; is that right? A. At that particular time.

Q. Did you give any raise to Eunice?

A. Not at that particular time.

Q. Did you give it to any of the women?

A. I will have to look up my records to be sure. I am not positive.

Q. Were there any women at that meeting?

A. No.

Q. Did you give your whole plant a 15-cent an hour raise at that time?

A. I might have given my plant a raise prior

(Testimony of Sam Bothman.)

to that, the operators on piece work, so I am not sure about the exact amount of raises at the exact times that the raises were given.

Q. My question was simply this: At the time you gave the cutters a 15-cent an hour raise, did you give the rest of the employees the same raise?

A. I won't say that I gave them exactly the same raise. However, there were some raises given around that time.

Q. You mean individually here and there, or did you give a blanket increase?

A. During the course of the year they have all been increased, yes.

Q. I am going to give you this question again: At the [344] time you gave the cutters the 15-cent an hour raise, did you give a blanket raise to all of your employees?

A. When you say "blanket," what do you mean?

Q. Each and every employee.

A. In the house?

Q. In production.

A. On that particular day?

Q. That's right. A. No.

Q. All right. How many times have you given raises to the cutters only?

A. Oh, that has happened off and on with individual cutters at various times. I think my payroll records will probably show that.

Q. But this time it applied to all of the cutters; is that right?

(Testimony of Sam Bothman.)

A. This time the cost of living was going up——

Q. Will you answer my question? Did it apply to all of the cutters on that occasion?

Mr. Shapiro: I am going to raise the same objection Mr. Nicoson did this morning, to the use of the word "cutters", if he intends it to be a descriptive term applying to the six men who went out on strike.

Mr. Sokol: No, I am referring to the cutters, as described here by Mr. Wishnak. [345]

Mr. Shapiro: I am not concerned with Mr. Wishnak's description and the Court isn't bound by it.

Mr. Sokol: All right. I agree with you. I withdraw that.

Q. (By Mr. Sokol) Did that raise at that time apply to all of the men who were cutting in the cutting department? A. It did.

Q. Now, you never met me prior to the strike of July 24, 1941, did you? A. No, sir.

Q. I wrote you a number of letters, didn't I?

A. Yes, sir.

Q. And you received them, didn't you?

A. Yes, sir.

Q. Letters of September 8th, September 9th and September 13th; is that right?

A. I don't recall the dates, but I received some letters from you.

Q. Did you also get a telegram from the Union, requesting you to notify them whether or not you would bargain?

A. I don't recall the exact date of receiving

(Testimony of Sam Bothman.)

them, but, however, I do remember receiving letters from you, and it seems to me like I received a wire from the Union.

Q. And they were requesting you to bargain; is that correct? [346] A. That's right.

Q. You responded to none of those communications? A. That's right.

Q. Either by telephone or in writing?

A. That's right.

Trial Examiner Erickson: On what date was that telegram?

Mr. Sokol: The telegram was in September, was it, 1941?

A. I don't recall the date.

Q. Well, was it before or after my letters?

A. I don't recall that either.

Q. In the same period of time, would you say?

Mr. Sokol: Do you have that telegram?

Mr. Shapiro: No, I haven't it. If I had it, I would give it to you.

Now, if the Court please, this gentleman is Mr. Sokol's witness. He called him.

Mr. Sokol: I am having him on cross-examination, an adverse witness.

Mr. Shapiro: What do you mean, on cross? You didn't call him as an adverse witness. Do you contend that you are not bound by his testimony?

Mr. Sokol: We are not raising that now. I withdraw my statement, whatever difference it makes. [347]

Mr. Shapiro: I make this point, Your Honor:

(Testimony of Sam Bothman.)

I am mindful of the fact that you are not bound strictly by the rules of evidence, but if Mr. Bothman is being called by Mr. Sokol as his witness, which he is, and there is nothing in the record to the contrary, I think he ought to be limited to the type of questions he should be permitted to ask.

Trial Examiner Erickson: Then you should make objections. I haven't heard any objections.

Mr. Shapiro: I am objecting on the ground that all of the questions are leading and suggestive, and they are cross-examination on direct.

Trial Examiner Erickson: Bear that in mind, Mr. Sokol.

Mr. Sokol: I also expect to bear in mind that the witness has stated that he didn't remember in answer to a great many questions, and I haven't spoken to him, and, apparently, he is an adverse witness; at least, hostile.

Trial Examiner Erickson: Proceed. I will rule as the objections are made.

Q. (By Mr. Sokol): You knew from these letters that I was acting for the Cutters Local, didn't you? You read the letters? A. Yes.

Q. Now, you have received communications from other lawyers in the city, haven't you?

Mr. Shapiro: That is objected to as being incompetent, [343] irrelevant and immaterial, and not proving any issues in the case.

Trial Examiner Erickson: Overruled.

Q. (By Mr. Sokol, Continuing): On occasion?

A. Surely.

(Testimony of Sam Bothman.)

Q. And you have responded to those communications, haven't you?

A. Yes, if I thought it was necessary.

Q. Why didn't you think it was necessary to respond to my communications?

A. Because you weren't representing 51 per cent or more of our Lettie Lee factory, I didn't think that I should communicate with you.

Q. Did you ever tell me that? A. No.

Q. Did you ever tell any Union official that?

A. I didn't think it was necessary.

Q. You kept that to yourself, waiting for this opportunity to bring it up; is that it?

Mr. Shapiro: I am going to object to the form of the question.

Trial Examiner Erickson: Sustained.

Mr. Shapiro: On the ground it is leading, suggestive and argumentative.

Q. (By Mr. Sokol): Do you remember any conversation that [349] you had with Mr. Swartz, Lou Swartz, concerning the Union?

A. I can't recall that I remember any definite conversations, no.

Q. Did he tell you he had been up to my office?

A. No.

Q. You have had conversations now and again with Mr. Swartz concerning the Union, haven't you?

A. Oh, I have discussed it in general with practically everybody, certainly.

Q. When did those discussions commence?

(Testimony of Sam Bothman.)

A. Oh, I can't recall the exact date.

Q. Were they mainly in 1941?

A. Well, I think most of the discussions have come up since the strike, on whatever date that was.

Q. Well, you had also discussed it before the strike, hadn't you?

A. Not to a great extent, no.

Q. But to some extent?

A. Just in general, in a general manner. I never made a big issue of the Union question in my factory.

Q. That wasn't my question. Here is my point now: You do recall discussing the Union with your employees during 1941, both before and after the strike? A. Yes, generally speaking.

Q. All right. But before the strike you didn't talk about [350] the Union to as many as after the strike; is that right? A. Naturally.

Q. Now, with that in mind, since you limited your discussion, can you tell us the names of any of your employees that you discussed the Union with prior to the strike?

A. The six cutters that you have on trial here.

Q. And was that on the occasion of the raise that you gave them?

A. That's right. I made them——

Q. Why did you discuss the Union at that time?

A. As far as discussing the Union with them, I merely asked them, "Do you fellows belong to the Union?"

Q. Why did you ask that simple question?

(Testimony of Sam Bothman.)

A. Because I would like very much to know how my people stand in the factory. I have asked that question before of other people.

Q. Have you asked it of any other department?

A. Not as a whole, no, but maybe individually. I have asked individuals how they feel individually.

Q. Name any one individual in any other part of the plant you asked that of.

Mr. Shapiro: I am going to object on the ground that it is not proper direct examination.

Trial Examiner Erickson: Overruled.

The Witness: Would you mind reading that question? [351]

(The question was read.)

The Witness: Yes, I have asked it of a couple operators, I think, at times.

Q. (By Mr. Sokol): Well, give us their names.

A. No, I can't recall the names of them.

Q. What did you ask? You asked them if they belonged to the Union?

A. I asked them how they felt in regard to the Union, and my usual reply was, "We would rather take care of our own business."

Q. That was before the strike? A. Yes.

Q. That conversation? A. Yes.

Q. A week or two before the strike, would you say?

A. Oh, it might have been six months before the strike. I don't know.

(Testimony of Sam Bothman.)

Q. Well, offhand on throughout the year?

A. A girl would come in and say they were organizing, and I would say, "How do you feel in reference to it?" And I would say, "I would rather take care of my own business."

Q. Do you hire the people down there?

A. Yes.

Q. And you asked them if they belonged to the Cutters Local, didn't you? [352]

A. Belonged to what?

Q. You asked them if they belonged to a Union? Let's make it that way.

A. Sometimes I asked that question. Sometimes I didn't.

Q. It all depended on the looks of a person, I assume; is that right?

A. No, not necessarily.

Q. Why did you make the qualification of asking it sometimes, and other times not. Just the mood?

A. That's right.

Q. It all depended on when you really wanted to find out about the person's background, and then you would go into these matters thoroughly, wouldn't you?

A. Not necessarily.

Q. Now, what did you say to the men, generally? What did you say? "Do you belong to a Union?"

A. Not necessarily, no. What I would usually do is, if we take on new people, ask them where they formerly worked, and if they worked in the type of a factory that makes the same type of

(Testimony of Sam Bothman.)

merchandise that we make. Why, then I would assume that they were more or less suitable for our line, and that is what I was more interested in than anything else.

Q. But then you would ask them if they belonged to a Union?

A. Sometimes I did. Sometimes I didn't. It wouldn't have made any difference. [353]

Q. Did some of the people tell you they belonged to a Union?

A. It seems to me like some of them did, yes.

Q. Will you name any employee that told you they belonged to the Union that is working for the plant, and give us the date?

A. I can't recall any of those things, because they are too vague. I really wouldn't be able to give you anything like that definite.

Q. Can you name any employee that told you he was a member of the Union, who is working now, or had worked at any other time?

A. Formerly a member of a Union?

Q. Can you name any person who came up to you for work, who said then and there they were a member of a Union, and to whom you gave a job?

A. No, I can't recall any of them that told me at that time. However, I would not have let that stop me from giving them a job, had they told me they were members of the Union.

Mr. Sokol: I move to strike that as not responsive.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Let it stand.

Q. (By Mr. Sokol): Well then, why did you ask the question? You mean you wanted C.I.O. people in your plant, instead of A. F. of L. people? Is that what you mean?

A. It didn't particularly make any difference to me whether [354] they belonged to the Union or not, if they could perform their duties in the proper manner.

Q. Why did you ask the question? Tell the Trial Examiner that.

A. Well, I did not always ask the question.

Q. Well now, listen.

A. Frankly—

Q. Here is my question, Mr. Bothman: You have already stated that you sometimes asked a prospective employee, "Do you belong to a Union?" Now, why did you ask that question?

A. Well, I asked the question sometimes because of the fact—due to the fact that most of my employees did not belong to a Union, and sometimes a person would be uncomfortable if they did.

Q. How did you know that most of the employees did not belong to the Union?

A. Through the fact of what they said about it. As far as knowing for sure, I did not know, and I don't know today.

Q. Now, do you recall discussions with the attorney for the Merchants & Manufacturers Association, don't you?

A. Discussing what, and when, and where?

(Testimony of Sam Bothman.)

Q. You do remember conversations about labor conditions at Lettie Lee's? A. When?

Q. I will ask you when. Do you recall any discussions at [355] any time in the last five or six years with the attorney for the M & M?

Mr. Shapiro: I am going to object to that question.

Trial Examiner Erickson: I have already sustained your objection.

Q. (By Mr. Sokol): Now, at the time that you gave the men who were cutting the 15-cent an hour rate, did you tell them that that unit was not appropriate for the purposes of bargaining?

A. I did not.

Mr. Sokol: That is all.

Trial Examiner Erickson: Step down.

(Witness excused.)

Trial Examiner Erickson: Do you have any more witnesses, Mr. Sokol?

Mr. Sokol: No, not now. I may say, Mr. Examiner, that I was going to subpoena Mr. C. R. Leslie, to show that he drafted this agreement, and the agreement provides for a \$5000 penalty if you ever sign up with any Union. He drafted it at the instance of the Southern California Garment Manufacturers Association, and there is testimony to that effect before the La Follette Committee, but if Your Honor feels that it will not aid the Board, I don't want to go to the trouble of subpoenaing him.

Trial Examiner Erickson: I didn't say it

wouldn't aid [356] the Board. I said it would aid the Board, and that was my ruling, but you were evidently fishing here without any foundation for the questions.

Mr. Sokol: I wouldn't say that, because he was the president of the organization and the minutes said he was present.

Trial Examiner Erickson: He had no memory of it, and it was just taking up pages in the record.

Mr. Sokol: I apologize for that.

Trial Examiner Erickson: Well, you don't have to.

Mr. Sokol: That is the Union's case except for Mr. C. R. Leslie.

Trial Examiner Erickson: Proceed, Mr. Shapiro.

Mr. Shapiro: I will call Miss Usher. Ordinarily, I would prefer to put some of this testimony in in a different order, but I don't want to keep these people away from the plant longer than is necessary.

Mr. Sokol: Before you proceed, may we go off the record for a minute, with your permission?

Mr. Shapiro: Yes.

Trial Examiner Erickson: Off the record.

(Discussion off the record.)

Mr. Sokol: May I go on the record now and state the purpose?

Trial Examiner Erickson: Yes. [357]

Mr. Sokol: Mr. Examiner, I apply for a subpoena for C. R. Leslie, attorney for the Merchants

& Manufacturers Association of Los Angeles. The purpose of this subpoena is to have Mr. Leslie produce the records or testify concerning the drafting of an agreement for the Southern California Garment Manufacturers Association, Inc., relating to an agreement between the members of that Association, providing in part that they shall never recognize a Union, and also, that in the event they recognize a Union, they would forfeit the sum of \$5000.

Trial Examiner Erickson: Do you have proof that this Lettie Lee, Inc. was a part of that?

Mr. Sokol: The only proof that I have is from the witness stand. The witness testified that at the time he was manager and the firm was known as Lettie Lee. That is the only proof to date. I am not going by what Mr. Shapiro says about that. I am going by what the witness said. Mr. Bothman testified that he was the president of the Southern California Garment Manufacturers Association. At that time he was manager of Lettie Lee, Inc., and he said it was a corporation at that time.

Trial Examiner Erickson: I understand that all right, but the question is: Do you have any proof that the agreement was actually consummated and entered into?

Mr. Sokol: No. The only proof I have is this, that [358] Lettie Lee, the firm of Lettie Lee, was a party to the agreement.

Trial Examiner Erickson: Talking about the drafting?

Mr. Sokol: To drafting it.

Trial Examiner Erickson: But you have no proof that they actually entered into an agreement or that the agreement ever was executed?

Mr. Sokol: That is correct. I don't think that is necessary. If they instructed their attorney to prepare it, he can state whether or not they executed it. I don't know.

Mr. Shapiro: That isn't the best evidence of whether there was an agreement, and I might say this, your Honor. This all comes as a bolt from the blue, so to speak, so far as I am concerned. I never heard of any of these proceedings before, and I don't know anything about an agreement, and I never heard of these associations until this afternoon.

Trial Examiner Erickson: I will deny the application for the subpoena. Proceed.

EUNICE DOROTHY USHER,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Shapiro:

Q. State your full name, please.

A. Eunice Dorothy Usher.

Q. Where do you work, Miss Usher? [359]

A. Lettie Lee, Inc.

Q. How long have you been employed there?

(Testimony of Eunice Dorothy Usher.)

A. In this particular stretch, I have been there since, I believe it was, June or July a year ago.

Q. June or July. Do you mean of 1940?

A. Yes.

Mr. Nicoson: Would you answer, please?

The Witness: Yes.

Q. (By Mr. Shapiro): You will have to answer out loud. A. I am sorry.

Q. The reporter isn't watching you when you nod your head. In what department do you work?

A. I work in the cutting department.

Q. Will you describe the type of work that you do? A. I do cutting.

Mr. Nicoson: I object to that. It is not an answer.

The Witness: It isn't complete.

Trial Examiner Erickson: I didn't hear the objection. I am sorry, Mr. Nicoson.

Mr. Nicoson: I object to that. It is not an answer. He said for her to describe the work, and she said she did cutting.

Mr. Shapiro: She hasn't finished.

The Witness: I haven't finished.

Trial Examiner Erickson: Finish your answer.

[360]

The Witness: I do a special type of cutting part of the time. I lay the pattern on the material, and it has a particular design in it, owing to the fact that it has been tucked or pleated, or some such matter, and it has to be laid on there in a very

(Testimony of Eunice Dorothy Usher.)

careful manner, and I mark around it, and cut it out.

Q. (By Mr. Shapiro): What instruments or tools do you use? A. A scissors.

Q. Do you use any power tools?

A. Sometimes.

Q. There are more cutters employed in the same department that you are in, are there not?

A. Yes, sir.

Q. Have you ever done the same kind of work that they do? A. Yes, sir.

Q. How often? A. Frequently.

Mr. Nicoson: What was that answer?

Trial Examiner Erickson: "Frequently."

The Witness: Frequently.

Q. (By Mr. Shapiro): Is there any difference, that you know of, between the type of work that the men cutters do and the type of work that you do?

Mr. Sokol: I object to that on the ground it calls for the conclusion of the witness. [361]

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro): Will you describe the type of work the men cutters do?

A. They lay markers on material, and cut it out either by scissors or machine.

Q. And what do you do?

A. I do that part of the time. Part of the time I work directly with the patterns, without markers.

Q. But, as I understand you then, either directly from the pattern or the marker, you cut around the

(Testimony of Eunice Dorothy Usher.)

chalk marks, where drawn, cutting out the material in accordance with the pattern or the marker?

A. Yes, sir.

Q. Is that correct? A. That's correct.

Q. Do you then require any more ability or skill to do what has been referred to here as sloping?

Mr. Nicoson: I object to that as calling for a conclusion of the witness.

Q. (By Mr. Shapiro, continuing): —than it does ordinary cutting?

Mr. Nicoson: I object to that as calling for a conclusion of the witness.

Mr. Shapiro: How else is the Court going to find out?

Mr. Nicoson: There isn't any evidence here that she [362] knows anything about sloping.

Trial Examiner Erickson: I will sustain the objection for the time being.

Mr. Shapiro: All right.

Q. (By Mr. Shapiro): Do you devote some of your work to doing what is called sloping?

A. Some of it, yes.

Q. Now, what is sloping?

A. Well, it is what I just described as laying the pattern on specially prepared materials, and marking around that, and cutting it.

Q. Now, you say specially prepared material. In what sense or in what respect is it specially prepared?

A. Such as material that has been sent out for

(Testimony of Eunice Dorothy Usher.)

pleating or tucking or embroidering, working on similar materials that need special preparation before they are cut.

Q. Now does it require any more skill or precision to perform that operation of sloping than it does the other cutting operations that you have previously described? A. I would say yes.

Mr. Nicoson: I object to that. That is a self-serving declaration.

Trial Examiner Erickson: Overruled.

Q. (By Mr. Shapiro): What is your answer?

A. I would say yes. [363]

Q. Do you believe that, in so far as the work that you do at Lettie Lee, you are just as much a cutter as the men who are employed in that department? A. I certainly do.

Mr. Nicoson: I object to what she thinks.

Trial Examiner Erickson: I will sustain the objection.

Mr. Nicoson: I move to strike out the answer, please.

Trial Examiner Erickson: It will be stricken.

Mr. Shapiro: I think it goes to the weight rather than the admissibility. I think a person ordinarily has some conception of what kind of work they are doing.

Mr. Nicoson: It isn't a question of what she thinks. The Board will make that decision.

Trial Examiner Erickson: Sustained. Proceed.

Q. (By Mr. Shapiro) Now, on the material that

(Testimony of Eunice Dorothy Usher.)

you work on in your sloping operations, you place the marker on the material, do you?

A. I place the pattern on the material.

Q. Or the pattern. And you trace around it with chalk?

A. Yes, sir.

Q. And you cut around the chalk marks?

A. Yes, sir.

Q. Have you ever a cut a dress?

A. Often.

Q. Pardon? [364]

A. Often.

Q. What do you do when you cut a dress?

A. Sometimes I use the markers. Sometimes I make my own lays, as for samples.

Q. When you cut a dress, do you do exactly the same type of work as the men cutters do?

A. I do.

Mr. Nicoson: I object to that. It calls for a conclusion of the witness.

Trial Examiner Erickson: Sustained.

Mr. Nicoson: I move to strike the answer, if there is one.

Trial Examiner Erickson: It will be stricken.

Q. (By Mr. Shapiro) Tell us what you do when you cut out a dress. Give us each operation. You see, as far as I personally am concerned, I don't know very much about this subject. Some of these other gentlemen know more about it than I do. So if you will just go into as much detail as you can, I will appreciate it.

A. When I am given a dress to cut, I get the marker for it, if it is a regular stock dress, and look

(Testimony of Eunice Dorothy Usher.)

at the ticket, and I get the marker, spread out my material, lay the marker, and proceed to cut it, just as any cutter would.

Q. What do you do after you have cut it?

A. Bundle it up, and send it down to the end of the room, [365] where it is assorted.

Q. Have you seen any of the men cutters cut a dress? A. Surely.

Q. What do they do?

A. The same procedure.

Q. Have you ever been asked to join this Cutters Local No. 84? A. I think not.

Mr. Shapiro: That is all.

Cross Examination

Q. (By Mr. Nicoson) What do you mean, you think not? Don't you know?

A. Positively not preceding the strike.

Q. You were not asked to join?

A. I was not.

Mr. Nicoson: Just a moment. I want to question you.

Mr. Shapiro: Just a moment.

The Witness: Oh, I beg your pardon.

Mr. Shapiro: One further question, if I may: How long have you been engaged in doing the same type of work that you have testified to on the stand?

The Witness: I have been a cutter for 10 years.

Mr. Shapiro: That is all.

Q. (By Mr. Nicoson) Where have you cut?

A. I have cut at a good many places. I have cut for [366] Marjorie Montgomery.

(Testimony of Eunice Dorothy Usher.)

Q. When did you cut there?

A. Approximately three or four years ago.

Q. How long were you at that concern?

A. About two years.

Q. Name some other places where you have been a cutter.

A. At Caltex Sportswear Company.

Q. Is that located here in Los Angeles?

A. It is.

Q. When did you work for them?

A. When?

Q. Yes.

A. That was my first job. Approximately 10 years ago. I was with them three years.

Q. What did you begin doing when you went to work at Caltex? A. Cutting.

Q. Right off the bat? A. Always a cutter.

Q. Now, describe to us some things that you did the first day you were there at this Caltex Company. What is it? A dress shop?

A. Yes, it is.

Q. Do you have any recollection of what you did that first day? [367]

A. I did cutting. They started me right out.

Q. Tell me what you cut.

A. Well, I cut dresses.

Q. How would you cut dresses?

A. I cut it according to the lines.

Q. Who put the lines on?

A. There were markers, who made the lines at the first.

(Testimony of Eunice Dorothy Usher.)

Q. They were already marked when they came through? A. Yes, sir.

Q. And this was your first day in the plant?

A. Yes, sir.

Q. The first day you had ever cut anything—right? A. Yes.

Q. How many dresses would you cut at a time?

A. One at that particular house, because that was a special measurement house.

Q. You were using the shears?

A. Yes, sir.

Q. You didn't use the power machine there?

A. Not to begin with.

Q. How long was it before you learned to use the power machine?

A. I don't recall exactly.

Q. Well, just about how long?

A. I learned while I was there. [368]

Q. Well, I understand that, but how long after you began to work there was it before you started to use the power machine? A. I couldn't say.

Q. No recollection of that at all?

A. No. It has been 10 years.

Q. But you do have a recollection of beginning to use the power machine while you were at Caltex? A. Yes, sir.

Q. How long did you use the power machine while you were at Caltex?

A. Not a great deal. They didn't use them a great deal there.

(Testimony of Eunice Dorothy Usher.)

Q. So your experience with the power machine at Caltex was rather small; is that correct?

A. Comparatively.

Q. Now, where did you next work?

A. Probably at Bettermade Garment Company.

Q. Is that here in Los Angeles? A. It is.

Q. What type of products do they make?

A. Dresses?

Q. Dresses? A. Yes, sir.

Q. Silk dresses? [369] A. Yes, sir.

Q. And did you cut there? A. Yes, sir.

Q. What kind of equipment did you use there?

A. The usual cutting tools.

Q. And what are they?

A. Scissors, chalk and a machine.

Q. By machine, do you mean the power cutter?

A. Yes, sir.

Mr. Shapiro: Miss Usher, can you keep your voice up, please?

The Witness: Oh, yes, I will try.

Mr. Shapiro: It is a little difficult to hear you.

Q. (By Mr. Nicoson) Did you do any group cutting while you were at this place, where you cut more than one dress at the same time?

A. Yes.

Q. How many would you cut at a time?

A. I don't recall.

Q. Do you have any idea? A. No.

Q. Did you ever have occasion to cut only one dress? A. I suppose occasionally.

(Testimony of Eunice Dorothy Usher.)

Q. Do you now remember whether you did or you did not? A. Not definitely. [370]

Q. You don't remember whether or not you cut one dress? A. Not definitely.

Q. And you don't remember how many dresses you cut with the power machine as a rule?

A. Correct.

Q. How long were you at this place of employment? A. One season.

Q. One season. What is that? What is a season? A. Four or five months.

Q. And what months usually constitute the season?

A. I think it was around approximately July until November in that case.

Q. How many people were employed at that plant? A. It was a large plant.

Q. About how many? A. Over 100.

Q. Over 100. How many cutters were employed there? A. I don't recall.

Q. Give us your best recollection.

A. I would say—I don't know—perhaps between six and a dozen.

Q. Can't you be a little more definite than that?

A. I really don't know.

Q. There were more than six and less than twelve, would you say that? [371]

A. Roughly speaking.

Q. Where did you next work?

A. Oh, I don't remember my whole history; for a custom made tailor.

(Testimony of Eunice Dorothy Usher.)

Q. Custom made tailor. Is that right?

A. Yes, sir.

Q. And is that here in Los Angeles?

A. It was.

Q. What kind of products do they make?

A. Tailored suits and coats.

Q. Tailored suits and coats? A. Yes, sir.

Q. That is wool, isn't it? A. Yes.

Q. Did they make any silk dresses?

A. No, sir.

Q. All wool? A. Yes, sir.

Q. No cotton? A. No.

Q. How large a plant was that?

A. Around a dozen employees.

Q. Around a dozen employees? A. Yes.

Q. How many cutters? [372]

A. I was the cutter.

Q. You were the only cutter?

A. And there were the boss and foreman and there was another man who did some.

Q. Did you do anything else besides the cutting there?

A. Part of the time I supervised the shop.

Q. That would be the operators, that type of employee? A. Yes.

Q. Did you ever function as an operator yourself? A. No, sir.

Q. You have no experience as an operator?

A. No, sir.

Q. Yet you were put in charge?

A. Well, of production.

(Testimony of Eunice Dorothy Usher.)

Q. And supervision of the operators?

A. And production.

Q. That is right?

A. It was handing out the work and seeing that it went through.

Q. Well, did your supervision only go to the handing out of the work, or did you have supervision over the operators?

A. Did I tell them—I told them what needed to be done, but not how to do it.

Mr. Shapiro: What plant is this, Mr. Nicoson? I am afraid I missed that. [373]

Mr. Nicoson: The Custommade.

The Witness: That wasn't the name of the shop.

Q. (By Mr. Nicoson) That wasn't the name?

A. It was a tailor shop.

Q. It was a tailor shop. It wasn't a manufacturing concern; is that right?

A. I don't know the distinction.

Q. Didn't I understand you to say you made suits? A. Yes, sir.

Q. And what else? A. And coats.

Q. And coats. They were tailored?

A. Yes, sir.

Q. What type of equipment did you use here?

A. Shears.

Q. Shears. No power machine here?

A. Not that I recall.

Q. Where next did you work?

A. Lettie Lee.

Q. When did you begin to work for Lettie Lee?

(Testimony of Eunice Dorothy Usher.)

A. I don't recall the exact date. I think it was in the summer. I don't recall the exact date.

Q. You don't recall?

A. No, I am not sure.

Q. When you began to work for Lettie Lee, what did you start [374] in doing?

A. Cutting.

Q. By cutting, what were you doing? Tell me just exactly. What was your first job there, do you recall?

A. No, I don't.

Q. Do you recall any of your first jobs there?

A. It was the regular procedure of cutting. I don't recall any detail.

Q. Did you go in on the cutting table and take your tickets along with the men?

A. I did.

Q. And you got your goods out of the stock room?

A. I got it in the same manner that the other cutters got theirs.

Q. Now, did you get it yourself?

A. I don't recall the method at that time.

Q. What is the method now?

A. The material is ordinarily brought to the cutters.

Q. Brought to you by a girl, isn't it?

A. Yes.

Q. It is brought to all the cutters by a girl, isn't it?

A. Usually.

Q. Even to the men; that is true, isn't it?

A. Usually.

(Testimony of Eunice Dorothy Usher.)

Q. Now, in June of last year, you weren't working on a cutting [375] table at that time, were you, with the men? A. This last June?

Q. Yes. A. Yes.

Q. What table were you assigned to?

A. I couldn't say.

Q. You couldn't say? Is that right?

A. Well, I shift around. I don't recall exactly which table I was on at that time.

Q. Do you shift—

A. They aren't numbered.

Q. Did you shift around in June?

A. I don't remember definitely.

Q. You don't remember about that. Did you shift around in July?

A. I frequently shift. I don't remember exactly when.

Q. And you don't remember whether or not you shifted in July? A. I don't remember.

Q. Do you remember if you shifted in August?

A. Well, sometimes they would be using my table, and I would have to use another one. That is why I shifted.

Q. Can you please tell me whether or not you shifted in August? A. No. [376]

Q. You don't know? A. No.

Q. Will you state whether or not you shifted in the month of May last year?

A. I don't recall as to any dates.

Q. You don't recall that. Will you state whether

(Testimony of Eunice Dorothy Usher.)

or not you shifted during the month of September last year?

A. I still say I don't recall any specific dates. They are frequent.

Q. Now, you spoke something about tucking or pleating. You don't cut that goods when it is originally cut from the bolt, do you?

A. Sometimes. Not usually.

Q. As a usual thing, you don't do it? That is right? A. That's right.

Q. As a matter of fact, you don't get the garment, or this piece of the garment, until after it has been cut by the men cutters, sent to an outside concern to be tucked or pleated, and then it comes back to you? Isn't that right?

A. In most cases.

Q. I beg pardon? A. In most cases.

Q. Well, isn't it a fact in all cases?

A. No. Sometimes I cut the garment and send the material out. [377]

Q. When was the last time you have done that?

A. I don't recall a definite date.

Q. Did you do that in the month of June, last year? A. I probably did.

Q. Well, do you know whether or not you did?

A. I don't recall definitely.

Q. You don't recall. Did you do it in the month of July, last year?

A. I shift back and forth from cutting to this so-called sloping, and other things. I don't remember when I have done these particular things.

(Testimony of Eunice Dorothy Usher.)

Mr. Sokol: May we have the other things?

Mr. Nicoson: Yes. I would like to have an answer to my question.

The Witness: Well, you are saying sloping——

Mr. Nicoson: Will you read my question, Miss Reporter, please?

(The question was read.)

Mr. Nicoson: Perhaps you should read the previous question, which has to do with June, so that the witness will be sure she understands.

(The record referred to was read.)

Q. (By Mr. Nicoson) That answer would hold true, would it not, to the months of July, August, September and every month you have been up there? [378] A. Yes, sir.

Q. Do you recall a single instance within the last six months, in which you cut a garment prior to the time it went out to be pleated or tucked?

A. Yes.

Q. When?

A. I don't remember the dates, but I am sure that I did.

Q. Well, about when?

Mr. Shapiro: Your Honor, I am going to object to this line of cross-examination. It could be only for one purpose, to test the credibility of the witness, and, certainly, it isn't a fair test to expect her to remember all of the dates or in what months she performed a particular operation in this factory. I mean, that challenges reason. If the witness claimed

(Testimony of Eunice Dorothy Usher.)

to remember these specific dates, I would doubt her veracity. I don't think it is a fair test of the witness, a test of the witness' credibility.

Trial Examiner Erickson: I don't think that is the purpose of these questions. The objection is overruled.

Mr. Nicoson: Will you read the question, please?

(The record was read.)

The Witness: Well, I know I did as lately as November.

Q. (By Mr. Nicoson) As November. On one occasion? A. What was that question?

Q. On one occasion? [379]

A. What was that question?

Q. On one occasion?

A. No, on more than one occasion.

Q. On more than one occasion?

A. Yes, sir.

Q. In November? A. Yes, sir.

Q. What about in October?

A. I very likely did.

Q. How many times? A. I don't recall.

Q. Are you sure whether or not you did in October? A. I am not definitely sure.

Q. What about August?

A. I don't remember exactly what dates and days I did these things.

Q. Yes. You said that about six times. Now, will you please answer my question. You can say you know or you don't know.

(Testimony of Eunice Dorothy Usher.)

A. I don't know.

Q. What about July?

A. I still don't know.

Q. What about June?

A. I still don't know.

Q. What about May? You don't remember; is that correct? [380]

A. Just what am I being questioned on? As to my remembering what?

Q. If you ever cut any garments prior to the time it went out to be pleated.

A. I have frequently, but I don't remember on what dates and in what months.

Q. So frequently that you can't remember it; is that right?

Mr. Shapiro: I object to that on the ground it is argumentative.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Nicoson) Just what is it that you do to a garment, after it is tucked or pleated?

A. After it is tucked and pleated, I lay the pattern on it, mark around it, lay it in the special position that it has to be according to design or pleating or embroidery, or whatever it is, put this on the exact spot it is supposed to be, draw around it, and cut it out.

Q. How do you know which is the exact spot?

A. According to my pattern, and according to my instructions.

Q. The pattern indicates where it should be laid?

A. Yes, sir.

(Testimony of Eunice Dorothy Usher.)

Q. After you get through with it, what have you got done? What is your finished product?

A. It is a certain portion of the garment.

Q. All right. What portion? [381]

A. It varies.

Q. Well, name some of them.

A. Sometimes it is a blouse.

Q. You cut the entire blouse? Is that what you are saying?

A. This represents a portion of a blouse.

Q. A portion of a blouse. What portion?

A. It varies.

Q. What portion of the blouse?

A. It varies according to the design.

Q. Well, name me some of the examples which you cut.

A. It might be a front, set in.

Q. What is it you cut in the front?

A. A certain portion of a garment.

Q. Can't you name the portion?

A. That is trim.

Q. Can't you name the portion you cut? After all, for ten years you have been cutting, aren't you able to name the portion?

A. It might be a front panel, it might be a collar, it might be a portion of the sleeve.

Q. Well, it might be. Is it? A. It varies.

Q. How often does it vary?

A. With every style.

Q. Every style. How many of these do you cut at one time. [382]

A. Sloping is usually done one at a time.

(Testimony of Eunice Dorothy Usher.)

Q. Is that what you call sloping?

A. That is what we call sloping.

Q. What else do you do besides cutting panels, and the like? A. I do regular cutting.

Q. What is that?

A. Getting a marker, stretching the material out, laying the marker on it and cutting according to the lines.

Q. What have you got after you have finished?

A. A dress.

Q. A dress. You cut all of the parts?

A. Usually.

Q. How often do you do that?

A. As often as given to me to do.

Q. How often is that?

A. It varies according with the season.

Q. Well, how often did you do it last June?

A. Last June I probably did it quite often, because the season was slow.

Q. Well, you probably did. Did you or did you not do it? A. I don't definitely remember.

Q. You don't know. What about July?

A. May I say that when the season is slow and there isn't much—— [383]

Q. Will you please answer my question?

Mr. Shapiro: She is, Counsel, if you will let her.

Mr. Nicoson: I don't think she is.

The Witness: What was the question?

Mr. Nicoson: If she wants to make a statement, she prefaces it with "May I say."

(Testimony of Eunice Dorothy Usher.)

The Witness: May I have the question, please?

(The question was read.)

Mr. Nicoson: You had better read the preceding question also.

(The record referred to was read.)

The Witness: I don't recall definitely.

Q. (By Mr. Nicoson) You mean you don't recall for August, September, November and the rest of the year; do you? That is the truth?

A. Not definitely, as to how often.

Q. Why is it necessary to have more skill as a sloper than it is as a man cutter?

A. Well, in the Lettie Lee Shop they want the sloping done with special care, because if it is crooked, it shows up very badly. It takes a very good eye to center things properly, and if a person works carelessly, it just isn't accurately done. It takes a good deal of accuracy to do it properly, as they require in the Lettie Lee Shop.

Q. Is it only in the Lettie Lee Shop that it requires more [384] skill to be a sloper than it does a cutter?

A. In some places they don't seem—sloping goes out any old way, but it isn't true in Lettie Lee. They are very particular.

Q. Then can you tell me why a sloper gets half as much as a cutter does? A. No, I can't.

Q. You don't know about that. But you know that is true, don't you?

A. I would say that I do not get the same.

(Testimony of Eunice Dorothy Usher.)

Q. What do you get?

A. I get 60 cents an hour.

Q. 60 cents an hour. What does that figure out in a week? A. \$24.

Q. Do you know how much a man cutter gets?

A. Not exactly.

Q. About \$45, isn't it, at Lettie Lee?

A. I have never asked.

Q. You don't know about that?

A. I have never asked.

Q. Well, do you know about it?

A. I do not.

Q. What percentage of your time is spent in sloping?

A. When there is a great deal of sloping, I do that. When there isn't, I do other things, I do cutting. [385]

Q. What is the normal assignment of sloping?

A. In a busy season, where there are many sloped styles in the line, it occupies the major part of my time.

Q. Do you know how to grade a pattern?

A. I do.

Q. Have you ever graded a pattern?

A. I have.

Q. What do you do when you grade a pattern?

A. I go through a great many very exacting—

Q. What are they? I want to know just exactly what you do when you grade a pattern.

A. Well, it is rather complicated.

Q. That is all right. You explain it to us.

(Testimony of Eunice Dorothy Usher.)

A. Well, I lay the pattern down on a beginning line.

Q. What is the beginning line? Let's have that straight.

A. Well, it varies. If it is a straight line, I usually begin with a straight line, or if it is a fold, I begin with a fold.

Q. How do you know how to begin?

A. According to judgment.

Q. According to judgment? A. And rules.

Q. And rules? A. Yes.

Q. What kind of rules? [386]

A. Well, just the general proceeding in grading.

Q. All right. Then what is the next step?

A. It depends——

Q. You don't need to look over to Mr. Bothman.

The Witness: I wasn't looking at Mr. Bothman.

Mr. Shapiro: She happened to be looking at me, and I might state that she can't get any information from me on how to grade a pattern. I would be the last person in the world on how.

Miss Usher, just tell it in your own way. Don't be nervous about this thing.

Mr. Nicolson: I object to any instruction of the witness on cross-examination.

Trial Examiner Erickson: Proceed.

The Witness: It is so complicated I scarcely know where to begin.

Q. (By Mr. Nicolson) That is what I thought. Now, go ahead and begin.

A. Well, if it is the front of a waist, if there is

(Testimony of Eunice Dorothy Usher.)

a fold, center fold, I put the center fold of the 10's, on the center fold, and draw in my neckline.

Q. For what purpose do you put that on the fold?

A. Well, that is the beginning point. The purpose of grading is to increase the pattern from size to size, according to special rules. [387]

Q. What do you put 10 down there for?

A. That is the original sample pattern, from which you begin all the grades.

Q. Now, what is the next step? What is the next step? A. Well, I draw in the neck.

Q. What do you do then?

A. Then I shift out $3/16$ —

Q. Well, first you draw in the neck, you say?

A. Yes.

Q. What do you do when you draw in the neck?

A. I draw around the edge of the pattern.

Q. With a piece of chalk?

A. With a pencil, a very sharp pencil.

Q. All right. Then you do what?

A. Then I shift straight across $3/16$ of an inch, and get the shoulder point and the top of the arms out.

Then I shift across another $3/16$ of an inch down, or $1/8$, and get the lower part of the arms out.

Q. Why do you do that?

A. It is just the procedure of grading a pattern, to get the line.

Q. You don't know why you do it?

A. Well, I don't know how to explain it any differently.

(Testimony of Eunice Dorothy Usher.)

Q. There must be some reason for it. Isn't there?

A. Well, it is just—I don't know how to explain it [388] any differently than—it is just the rules and the procedure and the method to do it. I could show you much easier, if that would be of any assistance.

Q. You don't know then why you make these shifts?

A. Well, that is the way you increase a pattern from size to size. It is a definite routine.

Q. That is what you are doing now; is that right?

A. Part of the time.

Q. I mean, that is what you are now describing?

A. Yes.

Q. And when you change it this 3/16 of an inch or 7/8, or whatever it was you said, that is when you have changed the size?

A. That is a part of the procedure.

Q. And then you go on and size it all the way through; is that true?

A. There are, anyway, I would say, perhaps around a dozen moves, maybe more, to make one size.

Q. These marks are all on a pattern, aren't they?

A. They are on heavy paper.

Q. They are not on the cloth? A. No.

Q. Now, what is your next step? Or, do you have it graded?

A. I didn't tell all of the dozen or more steps, no. [389]

(Testimony of Eunice Dorothy Usher.)

Q. When was the last time you graded a pattern?

A. I was doing some grading this morning.

Q. This morning. How much grading did you do this morning?

A. I completed the pattern I had been working on. I don't recall at what hour I finished.

Q. When did you begin grading patterns for Lettie Lee? A. When did I begin grading?

Q. Yes.

A. I have been doing it off and on for the last year and a half, since I have been with them this time.

Mr. Nicoson: That is all.

Cross Examination

Q. (By Mr. Sokol) Have you got any raise since the strike? A. I have.

Q. How much were you getting just prior to the strike?

Mr. Shapiro: Objected to as being incompetent, irrelevant and immaterial.

Trial Examiner Erickson: Overruled.

Mr. Shapiro: She is not a party to this proceeding, or a complainant.

Trial Examiner Erickson: She may answer.

Mr. Sokol: Overruled, was it?

Trial Examiner Erickson: No. I said she may answer.

Mr. Sokol: Oh.

Trial Examiner Erickson: Oh, yes, it was overruled. [390]

(Testimony of Eunice Dorothy Usher.)

The Witness: Approximately 51 and a fraction, I believe.

Q. (By Mr. Sokol) How do you get paid? By the week, the hour, or the piece?

A. By the hour.

Q. You were getting 51 and a fraction cents an hour? A. Yes.

Q. Did you get time and a half for overtime?

Mr. Shapiro: That is objected to as incompetent, irrelevant and immaterial. It is not an issue in this case, Your Honor

Trial Examiner Erickson: Overruled.

Mr. Shapiro: I don't understand that this is a wage and hour case.

Q. (By Mr. Sokol) Were you getting time and a half for overtime?

A. I don't recall doing any overtime.

Q. Now, what kind of a machine did you do your cutting with?

A. A regular cutting machine.

Q. You mean there is only one kind of a cutting machine?

A. There are Wolf's, there are——

Q. Wolf? Did you say Wolf?

A. I believe that is the name of one of the cutting machines. [391]

Q. You are mistaken, aren't you? You really don't know.

A. Well, there is a Universal machine.

Q. The kind that the cutters, the men cutters use?

(Testimony of Eunice Dorothy Usher.)

A. I believe those are the names of the cutting machines, the companies they are made by.

Q. Any others?

A. I have never paid much attention to the names on them, of the companies on them.

Q. Well, there are different types of machines, are there? A. Well,—

Q. What kind of a machine did you use?

A. It is a large round disc cutting machine.

Q. Round. What kind of a knife did it have?

A. A round blade.

Q. You worked for the custom tailors, too, on men's garments?

A. I worked for a tailor on men's garments.

Q. Where did you learn how to make men's garments as a cutter? A. There.

Q. In this one place?

A. It wasn't on men's tailoring. It was on ladies' tailoring.

Q. You learned right at that place, and you went right to work as a cutter? [392]

A. Yes. There wasn't a great deal of difference from what I had done before.

Q. What did you do in the slow season at Lettie Lee?

A. I do regular cutting, and I do some grading, and some sloping, when it comes in.

Q. What else do you do, when you don't do those things? You are still working in the slow season, aren't you? Do you do any other production work? A. I do sample cutting.

(Testimony of Eunice Dorothy Usher.)

Q. What else?

A. I don't recall anything else.

Q. You are kept on in the slow season?

A. Not all of the time.

Q. What wage did you start at when you went to work at Lettie Lee? What wage?

Mr. Shapiro: Objected to as being incompetent, irrelevant and immaterial.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Sokol) That is all. Oh, I will ask you this: Were you asked by Mr. Bothman, these questions before you came to the witness stand?

A. No, sir.

Q. Haven't you talked to anyone before you came up here to the witness stand, about what you were going to testify to?

A. Well, they asked me a few questions. I answered them. [393]

Q. Who asked you? Can't you point him out?

A. I had a few words with Mr. Shapiro and a few with Mr. Bothman.

Q. Has Mr. Bothman ever asked you if you were a Union member? A. I think not.

Q. He asked other people around there, hasn't he?

Mr. Shapiro: I object to that.

The Witness: I don't know.

Mr. Shapiro: I will withdraw the objection.

Trial Examiner Erickson: Let it stand.

Mr. Sokol: That is all.

(Testimony of Eunice Dorothy Usher.)

Redirect Examination

Q. (By Mr. Shapiro) When was the first time you ever saw me?

A. This morning. This morning, yes.

Q. About what time?

A. About 10:00 o'clock.

Q. Did I ask you to describe what your duties consisted of at the plant? A. You did.

Q. And how they compared with the work that the men cutters did? A. Yes, sir.

Q. And did you give me substantially the same answers as [394] you gave from the witness stand?

A. I did.

Q. Did I tell you what to testify to?

A. You did not.

Mr. Sokol: That is not in issue.

Mr. Shapiro: You seem to have made it an issue.

Mr. Sokol: Oh, no, I didn't.

The Witness: I agreed to tell the truth.

Mr. Nicoson: I want to ask one more question.

Mr. Shapiro: What was the last answer?

The Witness: I agreed to tell the truth.

Mr. Shapiro: That is all.

Recross Examination

Q. (By Mr. Nicoson) I have one more question: When is the slow season? I think you testified there was a slow season, didn't you?

A. Yes. It was slow in the early part of this month.

Q. Well, do you have more than one slow season?

(Testimony of Eunice Dorothy Usher.)

A. Yes. Usually, there is a summer slow season and a fall slow season.

Q. What months in the summer do you have a slow season?

A. Oh, around—it varies with the year—around April and May.

Q. April and May?

A. Sometimes later than that. [395]

Q. Does it sometimes extend over into June?

A. Sometimes it begins later and extends a little later.

Q. Do you know whether or not Lettie Lee had a slow season this year?

Mr. Shapiro: That is objected to as calling for a conclusion of this witness.

Trial Examiner Erickson: You mean in 1942?

Mr. Nicoson: No, I mean 1941. That is what I meant to say.

Trial Examiner Erickson: She may answer.

The Witness: I would think so.

Q. (By Mr. Nicoson) Well, when was the slow season this year, or in 1941?

A. Around April or May.

Q. Would you say it extended up into June?

A. I don't recall how long it extended.

Q. Did it extend up into July?

Mr. Shapiro: I am going to object to this question, if the Court please, on the ground it is neither cross-examination, nor proper redirect examination; on the further ground that all of these questions call for the conclusion of this witness.

(Testimony of Eunice Dorothy Usher.)

Mr. Nicoson: Well, I don't know who it was, but somebody had her testify that she wasn't always kept on in slow seasons, and I wanted to ask her about that. [396]

Mr. Shapiro: I didn't ask her that.

Mr. Sokol: I was the one that asked that.

Trial Examiner Erickson: She may answer.

Q. (By Mr. Nicoson) Do you know whether or not the slow season in 1941 extended up into July?

A. I think not, as far as I was concerned.

Q. As far as you were concerned, it didn't; is that right?

A. I believe not.

Q. And that is also true of August, is it not?

A. I was working in August. I don't recall.

Q. Well, as a matter of fact, in July and August was when you began the peak of your business for the fall trade; isn't that right?

A. I was busy at that time.

Q. Well, not only you, but the rest of the plant; is that right?

A. In July and August, I would say yes.

Q. You would say yes. And also September?

A. I think it was pretty good then.

Mr. Nicoson: Pretty good in September. Thank you. That is all.

Trial Examiner Erickson: Do men do sloping?

The Witness: I don't know of any men who do much sloping.

Trial Examiner Erickson: Well, have you known them to [397] do any sloping in Lettie Lee?

(Testimony of Eunice Dorothy Usher.)

The Witness: Perhaps just occasionally, if there was more than I could take care of, but not as a practice.

Trial Examiner Erickson: Is that because you are more skilled than the men are?

The Witness: It is.

Trial Examiner Erickson: All right.

Mr. Shapiro: Nothing further.

Trial Examiner Erickson: Step down.

(Witness excused.)

Trial Examiner Erickson: We will adjourn until 9:30 tomorrow morning.

(Whereupon, at 4:30 o'clock p. m. the hearing in the above entitled matter was adjourned until 9:30 a. m. January 28, 1942.) [398]

[Title of Board and Cause.]

Room 808, United States Post Office and
Court House Building,
Spring, Temple and Main Streets,
Los Angeles, California,

Wednesday, January 28, 1942.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a. m.

PROCEEDINGS

Trial Examiner Erickson: The proceeding will come to order.

Mr. Shapiro: I will call Miss Lembke.

KATHRYN LEMBKE,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Shapiro) Will you state your name, please?

A. Kathryn Lembke, K-a-t-h-r-y-n L-e-m-b-k-e.

Q. Where are you employed, Miss Lembke?

A. Where?

Q. Yes. A. At Lettie Lee, Inc.

Q. How long have you been working there?

A. Two and a half years about, approximately.

Q. In what capacity are you employed there?

A. Cutter.

Q. Do you work in the same department that Eunice Usher works in? A. Yes, sir.

Mr. Nicoson: I object to the use of the word "department." There is no evidence here to show there is such a thing. [401]

Mr. Shapiro: Without meaning by the use of the term to attach any particular significance to the term.

Mr. Nicoson: With that understanding I withdraw the objection.

Trial Examiner Erickson: She may answer it then.

Q. (By Mr. Shapiro) What is your answer?

A. Yes, I do.

Q. To clear up the term, do you work within the space on the 12th floor enclosed by a partition and the two walls of the building?

(Testimony of Kathryn Lembke.)

A. Yes, sir.

Q. In the same room where Vito Cimarusti, and Angelo Castella, Joe Sardo, Louis Baliber, Don Quinn and Nolan Berteaux worked?

A. Yes, sir.

Q. Will you state to the Court what your duties consist of?

A. At present I am cutting dresses, the same as the other men, which is, an order comes in and I get a marker and cut a stack of dresses, as many as the order calls for.

Q. What tools, or instruments, do you use in your work?

A. The scissors, machine, short knife.

Q. Will you describe the procedure that you follow in cutting a dress? Just start at the beginning and take up through each step. [402]

A. I look at the ticket to see what style the dress calls for. I go to the right bin and get the marker and the pattern, and I then proceed to unroll the marker and lay it on a piece of paper. Then I spread my material, the proper length, and lay the marker on them, and cut it out.

Q. Do you do any sloping?

A. I have done sloping.

Q. What do you do in connection with sloping? Describe that process.

A. I take the pattern and if there should be a strip of pleating, I place the pattern on the pleating, mark around it with chalk, cut it out, put in all the notches, and stamping it, if necessary.

(Testimony of Kathryn Lembke.)

Q. Were you in the court room yesterday afternoon when Eunice Usher testified?

A. Yes, sir.

Q. Do you perform substantially the same duties that she testified to yesterday?

Mr. Nicoson: I object, unless he fixes a time.

Trial Examiner Erickson: Will you read the question again, please?

(The question was read.)

Trial Examiner Erickson: You mean at the present time?

Mr. Shapiro: I will withdraw the question. [403]

Q. (By Mr. Shapiro) Were you working at Lettie Lee on July 24, the day a strike was called?

A. No, sir.

Q. Where were you at that time?

A. I was on a leave of absence.

Q. When did you leave on your leave of absence?

A. The latter part of June, I think between the 25th and the 30th of June, —no, of May, I mean.

Q. 1941? A. May, it was. Yes, 1941.

Q. And when did you return?

A. October 2nd.

Q. Where did you go?

A. To Lake Tahoe.

Q. Have you been taking a leave of absence every year at approximately the same time?

A. Yes, sir.

Q. How many times have you done that?

A. Twice since I have been at Lettie Lee.

(Testimony of Kathryn Lembke.)

Q. You always return to your employment after your summer leave is finished? A. Yes, sir.

Q. Prior to the time that you left on your leave of absence the latter part of May, 1941, what type of work were you doing? [404]

A. I was cutting trimmings, that year, sleeve fillings, and I was re-cutting.

Mr. Nicoson: What was that? I am sorry.

(Portion of answer read.)

Q. (By Mr. Shapiro) Anything else?

A. I was cutting a few dresses when they were needed.

Q. In cutting the dresses, did you perform the same operation that you have testified to previously?

A. Yes.

Q. How long have you been cutting at Lettie Lee?

A. 1939, about September. That isn't definite.

Q. Do you work at the same kind of a bench or table that the male cutters use?

A. Exactly.

Q. Do you use the same tools that they use?

A. Yes, sir.

Q. Do you perform the same operations and functions that they do in cutting out a dress?

A. Precisely.

Q. Is there any difference between the work you do and the work that the men cutters do?

A. None at all, except that they didn't cut trimmings while I was cutting trimmings, of course.

Q. Can you make a marker?

(Testimony of Kathryn Lembke.)

A. Yes, sir. [405]

Q. Have you ever made any? A. Yes.

Q. What is a marker?

A. It is a piece of paper upon which the pattern is marked, where, when we cut out our material in order not to spoil the material, we mark it on the paper.

Q. Do the male cutters make markers?

A. Sometimes.

Mr. Shapiro: That is all.

Cross Examination

Q. (By Mr. Nicoson) Who makes them the other time?

A. We have a man that does all the—he does nothing but make markers.

Q. Who is that? A. Mr. Litwin.

Q. Mr. Litwin makes all the markers, doesn't he? A. Yes.

Q. And as a general rule, that has been going on for the last year, or longer; isn't that true?

A. Yes.

Q. You aren't called upon to make markers, are you, Miss Lembke? A. Yes.

Q. How often are you called upon to make markers?

A. Well, about two weeks ago I made several for duplicates. [406]

Q. How many would you say is several?

A. Well, I made, I think, three. I wouldn't say. Two or three.

Q. When did you first make a marker?

(Testimony of Kathryn Lembke.)

A. Within the first year that I worked there.

Q. How many did you make around that time?

A. I don't recall. I have no idea.

Q. Now, you have testified that your work is substantially the same as a man operator. By that do you mean there is a difference?

A. At present there isn't any difference at all.

Q. But prior to the strike there was a substantial difference, wasn't there?

A. Well, I could do the same work that the men did, and I did it frequently.

Q. But you didn't do it as a regular custom, did you? A. Yes, I did.

Q. Prior to the strike?

A. Well, I did other things too.

Q. Prior to the strike your chief job was trimmings, wasn't it?

A. Well, among other things.

Q. Isn't that true?

A. Among other things. I didn't just do trimmings.

Q. But your chief job, was trimmings, isn't that true? [407] A. Yes.

Q. As a matter of fact, your work was termed a trimmer?

A. No, sir. I was called a cutter. A trimmer isn't a factory—in fact, you don't call them a trimmer.

Q. Well, a trimmer doesn't perform her work until after the operators have worked on it?

A. That's right.

Q. And that is when you performed your work?

(Testimony of Kathryn Lembke.)

A. No, I didn't do that work at all.

Q. You did it prior to the operators?

A. I cut the trimmings as the dress was being cut by the men.

Q. I see. What do these trimmings consist of?

A. Padding for the sleeve caps.

Q. That is a little cotton—

A. And taffetas for the front facings, taffetas for peplums.

Q. Let's get at the paddings first. The padding is a rough cotton, coarse piece of cloth, isn't it?

A. Cotton batting.

Q. Cotton batting. And in the cutting of these paddings, you used the scissors, didn't you?

A. And the machines.

Q. And the machines, and a short knife. What is the short knife?

A. It is a small, heavy knife with a short blade. It has [408] a heavy handle.

Q. Is it power operated? A. No.

Q. Just an ordinary knife?

A. It is just a knife.

Q. Just an ordinary knife. Now, the biggest portion of your time was consumed in this padding business, wasn't it? A. Not always.

Q. But as a general rule, that was true?

A. Yes.

Q. Now, you also cut paddings for the interior or the inside of belts? Am I right about that?

A. Linings, yes.

Q. And when you cut those paddings, they were

(Testimony of Kathryn Lembke.)

made out of the same coarse cotton material; isn't that right?

A. No. Some of the linings are sometimes taffeta. Sometimes they are muslin.

Q. Sometimes muslin. Well, muslin isn't as heavy as the padding material, is it? A. No.

Q. Do you say that you cut more muslin than you did taffeta for inside of belts?

A. Well, I can't say. I have no idea.

Q. Well, as a general rule, aren't belts lined with muslin more than with taffeta? [409]

A. Not especially, no. It depends upon the style, the line that happens to be selling at that time.

Q. Would it be about 50-50?

A. I would say so.

Q. Just about 50-50? A. Yes.

Q. In that operation you used the scissors, did you? A. The scissors and machine.

Q. And the machine knife. And did you use the short knife also? A. No.

Q. You don't use the short knife on belts?

A. No.

Q. Now, what else was it that you said you cut besides that? A. I did re-cutting.

Q. Re-cutting.

A. Any material that—any dress that had a flaw in it, that has to be sent back, so that that particular piece must be re-cut.

Q. That is a salvage operation, isn't it?

A. What do you mean by "salvage"?

(Testimony of Kathryn Lembke.)

Q. Well, you are trying to save the piece of cloth, aren't you? A. Yes. [410]

Q. The cloth with the flaw, so that it can be used in the ordinary operation, you then re-cut, so that you do really salvage it from the faulty piece of material?

A. No. I use a new piece of material to make the re-cutting.

Q. I see. Well, where you find a faulty piece of material, it is your job to substitute for that faulty piece a good piece; is that correct?

A. Yes, sir.

Q. And you put the bad piece on the good piece and cut around it? A. No, I take the pattern.

Q. You take the pattern?

A. And make a marker for that particular piece, and lay it on the material and cut it.

Q. Now, do you ever do any trimming after the operator has finished the garment? A. Never.

Q. These trimmings as you cut them, what do you do with them?

A. I wrap them up in a piece of paper and put them with the dress.

Q. And send them over to the assorter?

A. Either give them to the cutter, as he was finishing the dress, or else take them to the assorter.

[411]

Q. I see. Now, prior to the strike how often did you cut a dress?

A. I can't say. I cut many dresses there the first year. I cut more perhaps than I did the second season.

(Testimony of Kathryn Lembke.)

Q. Let's talk about the second season. You cut very few dresses during the second season, didn't you?

A. Well, when it was slow, I was kept on and I cut dresses at that time.

Q. Did you cut dresses when the full complement of men cutters were there?

A. If it were needed, I did.

Q. Well, was it ever needed?

A. Well, yes.

Q. How often did that occur?

A. I don't know.

Q. You haven't any idea?

A. I have no idea.

Q. Now, isn't it your practice, Miss Lembke, in the summer months when you go up to Lake Tahoe, —when you take off and go up to Lake Tahoe, there you become employed?

A. For a vacation, yes.

Q. You work during the entire period that you are up there, don't you?

A. Yes. Not—well, I spent a month at San Francisco this last time that I didn't work. [412]

Q. But for three months you were employed at Lake Tahoe? A. Yes.

Q. You weren't employed in the garment business up there at that time, were you? A. No.

Q. Did you also work up there the previous year? A. Yes.

Q. You go up there and get your job each summer; is that right? A. Yes.

Q. The same job? A. Yes.

(Testimony of Kathryn Lembke.)

Q. For the same employer? A. Yes, sir.

Mr. Nicoson: That is all.

Cross Examination

Q. (By Mr. Sokol) How much did you make prior to the strike, just immediately prior to the strike?

A. Well, I wasn't there. Oh, you mean before I went away in the summer?

Q. That is right. A. \$20.00.

Q. A month, or a week? A. A week.

Q. Did you get time and a half for overtime?

[413]

A. Yes, sir, I did.

Mr. Shapiro: That is objected to as incompetent. I will withdraw the objection.

Mr. Sokol: All right.

Mr. Shapiro: I think we ought to have an understanding though that we are trying a particular controversy here.

Mr. Sokol: Why take up time with that?

Mr. Shapiro: Why ask the question, if you don't want to take up time?

Q. (By Mr. Sokol) Now, Miss Lembke, how many times have you discussed your testimony with Mr. Bothman, before taking the witness stand?

A. Yesterday morning.

Q. And today? And this morning?

A. I spoke to Mr. Shapiro this morning, not with Mr. Bothman.

Q. Yesterday morning how much time did you take up with Mr. Bothman?

(Testimony of Kathryn Lembke.)

A. Maybe three minutes; maybe five minutes.

Q. Maybe ten minutes?

A. No, sir. He spoke to me a very minutes.

Q. Where?

A. He came to my table in the cutting room.

Q. And what did he say?

A. Well, I can't repeat his exact words. [414]

Q. Are you being paid for being here?

A. Yes, sir.

Q. Have you ever been a member of the union?

A. No, sir.

Q. When did you go to work for Mr. Bothman?

A. In 1939.

Q. Prior to that time had you ever worked in the garment industry? A. Yes, sir.

Q. With what concern?

A. M. & G. Koch, K-o-c-h.

Mr. Shapiro: May I have the last question and answer, please?

(The question and answer were read.)

Q. (By Mr. Sokol): How big a concern is that? How many employees?

A. I can't say how many employees. About—it was about—it was a small concern.

Q. What did you do there?

A. (Continuing): —maybe 25 employees. I cut.

Q. Cut what? A. Garments.

Q. What kind of garments?

A. Housecoats.

Q. Housecoats? [415]

(Testimony of Kathryn Lembke.)

A. Denims, cottons, corduroys.

Q. What kind of machine did you use there?

A. A round blade.

Q. What is the name of it?

A. I am not sure of the machine they had.

Q. How many machines did they have?

A. They had one machine, one cutting machine.

Q. You don't know the name of it?

A. Well, I don't know the brand. I never paid any particular attention.

Q. What brands do they have at your plant?

A. They have a Wolf. Then they have an Eastman, new. Right now they have four Wolfs and one Eastman.

Q. What kind do you use?

A. I use both.

Q. When did you return after the strike?

A. October 2nd.

Q. What was your rate of pay? A. \$24.00.

Q. Then you got an increase?

A. Yes, I have every summer.

Q. Oh, you got an increase every summer?

A. I have been.

Q. When you first went to work for Lettie Lee, how much were you making a week? [416]

A. I was—\$16.00.

Q. \$16.00. And you have gotten up to \$24.00 now? A. Yes, sir.

Q. Do you know what the other cutters make?

A. Yes, sir.

Q. Around \$45.00 or \$50.00 a week, don't they?

(Testimony of Kathryn Lembke.)

A. Yes, sir.

Q. Sometimes more than that, with the overtime, \$65.00 or \$70.00?

A. Yes, sir.

Q. Do you remember the time the cutters got an increase in June, 1941?

A. I wasn't there at that time.

Q. You weren't there. Do you know anything concerning increases received by the cutters?

A. No, sir.

Q. The men cutters?

A. No, sir. They may have mentioned that they got one, but I have never asked them; if they did, it wasn't my business, and I never knew if they were kidding or not anyway so——

Mr. Sokol: That is all.

Mr. Shapiro: Just a minute, Miss Lembke.

Redirect Examination

Q. (By Mr. Shapiro): When Mr. Bothman spoke to you yesterday [417] morning, as you have testified, did he tell you what to say?

A. No, sir.

Q. You say that you were being paid for coming up here. What do you mean by that?

A. Well, I don't know. I didn't punch out. That is what I meant. I didn't punch my time card out.

Q. You mean your pay is not being stopped at the factory?

A. That's right.

Q. But you are not being paid—I can't think of the word—you are not being docked for the hour or so this morning; is that what you mean?

A. Yes, sir.

(Testimony of Kathryn Lembke.)

Q. Mr. Bothman hasn't offered you any money to come up here to testify, has he?

A. Oh, no, sir.

Q. As a matter of fact, your compensation or money hasn't even been discussed between you and Mr. Bothman, has it?

A. No, sir.

Q. When you spoke to me this morning did I tell you what to say?

A. No, sir.

Q. What kind of work did you do on your vacations, during your leave of absence?

A. Waitress.

Q. Did you do the same work last summer?

[418]

A. Yes, sir.

Q. And how much were you paid for that?

A. \$30.00 a month, and room and board.

Q. Do you consider that that is your vacation every summer?

A. Yes, sir.

Mr. Nicoson: We object to that, what she considers it.

Trial Examiner Erickson: Sustained.

Mr. Nicoson: I move to strike out the answer, if there is one.

Trial Examiner Erickson: Stricken.

Q. (By Mr. Shapiro): Why do you take the leave of absence every summer and go to Lake Tahoe?

Mr. Nicoson: We object to that as immaterial and irrelevant.

Trial Examiner Erickson: Overruled.

The Witness: Because it is a pleasant change for me.

(Testimony of Kathryn Lembke.)

Q. (By Mr. Shapiro): And you always have an understanding that upon your return you are to resume your employment with Lettie Lee; is that correct? A. Yes, sir.

Mr. Shapiro: That is all.

Recross Examination

Q. (By Mr. Sokol): At \$20.00 a week? Is that your understanding?

A. There has been no discussion of my wages before I left. [419]

Q. Do you know of any occasion when you joined with other cutters in requesting an increase? A. Never.

Mr. Sokol: That is all.

Redirect Examination

By Mr. Shapiro:

Q. By the way, have you been asked to join this Cutters Local? A. Never.

Q. You don't belong to it, do you?

A. No, sir.

Mr. Shapiro: That is all.

Recross Examination

By Mr. Nicoson:

Q. One more question: When you returned from Lake Tahoe this year, you were put to work doing a different type of work than you had prior to your going on your leave of absence; isn't that correct? A. Yes, sir.

Mr. Nicoson: That is all. Thank you.

Mr. Shapiro: Just a minute, Miss Lembke.

(Testimony of Kathryn Lembke.)

Redirect Examination

By Mr. Shapiro:

Q. Before you left on your vacation you had done the same type of work, hadn't you?

Mr. Sokol: That is leading.

The Witness: Yes, sir.

Mr. Nicoson: I object to that, Mr. Examiner. She is [420] his witness.

Trial Examiner Erickson: All right. Reframe the question.

Mr. Nicoson: I move to strike the answer.

Trial Examiner Erickson: It will be stricken.

Q. (By Mr. Shapiro): You say when you returned from your vacation you were given a different kind of work to do. Is that right?

A. Yes, sir. Not exactly different. It is just that I did more of another thing.

Q. All right. Of what thing?

A. Well, I do—I don't cut any trimmings now. I cut just dresses.

Q. Had you cut dresses before you went on your vacation? A. Yes, sir.

Mr. Shapiro: That is all.

Mr. Nicoson: But not generally?

The Witness: Not as many as I do now.

Mr. Nicoson: That is all. Thank you.

Mr. Shapiro: Nothing further.

Trial Examiner Erickson: Step down.

(Witness excused.)

Mr. Shapiro: I will call Mr. Thain. [421]

No. 10382

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
LETTIE LEE, INC., a corporation,
Respondent.

Transcript of Record
In Two Volumes
VOLUME II
Pages 445 to 833

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

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Upon Petition for Enforcement of an Order of the National
Labor Relations Board

DAVID ROBERT THAIN,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Shapiro): State your full name, please.

A. David Robert Thain, T-h-a-i-n.

Q. Where are you employed?

A. Odessa, Texas.

Q. I asked you where you were employed?

A. Oh, I am very sorry.

Mr. Nicoson: That is an answer too.

Trial Examiner Erickson: Let him answer.

Mr. Shapiro: The witness obviously didn't understand what my question was.

Q. (By Mr. Shapiro): Where do you work now? A. Lettie Lee, Inc.

Q. What did you mean when you said "Odessa, Texas."

A. I thought you asked, where was I born.

Q. Are you related to Lettie Lee, one of the officers and owners of Lettie Lee, Inc.?

A. Pardon me. I didn't understand the question.

Mr. Shapiro: Will you read it, please?

(The question was read.)

The Witness: Yes.

Q. (By Mr. Shapiro): What is your relationship to her? [422]

(Testimony of David Robert Thain.)

A. She is my sister.

Q. How long have you been employed by Lettie Lee, Inc.?

A. About four years.

Q. In what capacity?

A. Cutter.

Q. Have you been a cutter throughout the period of your employment there?

A. No. I swept the floor when I first came there.

Q. How long have you been a cutter?

A. For about three and a half years.

Q. Were you a cutter, working at Lettie Lee, before Vito Cimarusti came to work there?

A. Yes.

Q. And before Angelo Castella?

A. Yes.

Q. And before Mort Litwin?

A. Yes.

Q. And before Joe Sardo?

A. Yes.

Q. And before Louis Baliber?

A. Yes.

Q. And before Don Quinn?

A. Yes.

Q. And before Nolan Berteaux?

A. Yes. [423]

Q. And were you also there before Miss Lembke?

A. Yes.

Q. And Dorothy Richard?

A. Yes.

Q. And Eunice Usher?

A. Yes.

Q. In other words, you are the oldest cutter in the employ of Lettie Lee; is that correct?

A. That's right.

Mr. Nicoson: I object to that.

Mr. Sokol: That is immaterial. The question is: Was he employed on the date of the request for bargaining.

(Testimony of David Robert Thain.)

Mr. Shapiro: We will get to that.

Mr. Sokol: Let's get to it in the proper way.

Mr. Nicoson: Yes, let's not have the witness give his conclusions.

Mr. Sokol: Will you stipulate, before we go any further——

Mr. Nicoson: I don't know whether I will or not.

Mr. Sokol: I want a stipulation that Miss Lembke was not employed on the respective date of attempts to bargain.

Mr. Nicoson: The payroll shows it, and the payroll is in evidence.

Mr. Sokol: Is that in evidence?

Mr. Nicoson: Yes.

Mr. Sokol: That is all right then. [424]

Q. (By Mr. Shapiro): Did you go on a leave of absence in the early part of 1941?

Mr. Nicoson: I object to that. It is leading.

Trial Examiner Erickson: Sustained.

Mr. Nicoson: It is certainly suggestive of the answer to this witness.

Q. (By Mr. Shapiro): Did you work at Lettie Lee in January of 1941?

A. In January of 1941?

Q. Yes. That is a year ago. A. Yes.

Q. Did you leave your employment at Lettie Lee at any time during that month? A. Yes.

Q. Where did you go?

A. To Odessa, Texas.

(Testimony of David Robert Thain.)

Q. Why did you go?

A. I went for a change, and my mother has a ranch down there, so I spent some time there and helped her out.

Q. Did you engage in any other employment after you left Lettie Lee in January, 1941?

A. No.

Mr. Sokol: He said no. He said he had a ranch.

Mr. Shapiro: He didn't say any such thing.

Trial Examiner Erickson: Now, listen. Proceed with the [425] questioning. No bickering between the attorneys.

Mr. Sokol: Pardon me.

Q. (By Mr. Shapiro): Did you have any conversation or discussion with any officer of Lettie Lee, prior to the time that you took your leave of absence? A. Mr. Bothman.

Mr. Sokol: I object to that on the grounds it is self-serving, especially between a——

The Witness: As a matter of fact, I had.

Mr. Nicoson: Time out.

The Witness: Sorry.

Mr. Nicoson: As a matter of fact, there is nothing in the record to show that he went on a leave of absence.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro): How long did you remain away? A. Less than a year.

Q. When did you return?

A. In December.

(Testimony of David Robert Thain.)

Q. Of 1941? A. Of 1941.

Q. Did you receive any employment or compensation from any source while you were gone?

A. No.

Q. Did you tell anybody you were going?

A. Yes. [426]

Mr. Sokol: I object to that as immaterial.

Trial Examiner Erickson: Sustained.

Mr. Shapiro: If your Honor please, I think we have a right to establish that the man took a leave of absence.

Mr. Nicoson: I object to this instruction of the witness by means of argument. It is certainly most unethical.

Mr. Shapiro: I resent that.

Mr. Nicoson: Let's let the witness leave the room, if you want to make a speech about it.

Mr. Shapiro: All right. Let him leave the room.

Trial Examiner Erickson: Proceed with the examination now.

Mr. Shapiro: Is your Honor ruling that I am not permitted to ask him?

Trial Examiner Erickson: I ruled on the form of the question.

Mr. Shapiro: I beg your pardon?

Trial Examiner Erickson: I ruled on the form of the question.

Q. (By Mr. Shapiro): Did you have any discussion or conversation with anyone before you left in January concerning the reasons for your leaving?

(Testimony of David Robert Thain.)

A. Yes.

Mr. Sokol: Just a moment. Oh, I will wait.

Q. (By Mr. Shapiro): With whom did you have that? [427]

A. Mr. Bothman.

Mr. Sokol: I object to that.

Trial Examiner Erickson: Why?

Mr. Sokol: On this ground, that the only fact in issue is: Was he employed on the dates of the requests for bargaining, and the record is clear that he wasn't.

Trial Examiner Erickson: The objection is overruled.

Q. (By Mr. Shapiro): With Mr. Bothman?

A. Yes.

Q. Will you state the conversation?

A. Well, I went to Mr. Bothman, and I said that my health was rather slipping and it would do me good to have a change, and since my mother had this place down in Texas, and I was very welcome to come there, why, I decided to do that. But first I wanted to make sure that I would be able to come back to work if I wanted to. And he assured me that that was the case, that no matter how long my leave of absence was, that my job would still be waiting for me.

Q. And when you returned from Texas, did you go back to work at Lettie Lee? A. Yes.

Q. Have you been asked to join this Cutters local? A. No.

(Testimony of David Robert Thain.)

Q. Will you state to the Court what duties you were performing at Lettie Lee immediately prior to your leaving in January, [428] of 1941?

A. I was a regular cutter.

Q. State what your duties were. What did you do?

A. Well, usually the orders were written up by a girl and handed to me, the number of dresses, and the sizes, and the style. After determining the style which I was supposed to cut, I would go to the marker hangers and get the marker, mark that particular style, and I would get the pattern, bring the marker back, unroll the full size I was to cut, determine the length of material, lay up the material, and cut it out. If it were five ply I cut it with the shears; if it were over five ply, I usually used the round knife machine.

Q. All right. Anything else that you did?

A. Well, of course, there is always a certain amount of detail to a dress, like trim, and all that, for which you don't have markers. Therefore, it is necessary for every cutter to mark that out on the cloth, or on paper, and finish up the dress.

Q. And did you do that trim too?

A. Well, yes.

Q. Did the other cutters do the same work?

A. Yes.

Q. Did Kathryn Lembke and Eunice Usher—

A. Exactly the same work.

Q. —do the same work as you did? [429]

(Testimony of David Robert Thain.)

A. Exactly the same.

Q. Did they do the same work that the other men cutters did? A. Exactly.

Mr. Shapiro: That is all.

Cross Examination

By Mr. Nicoson:

Q. What did you do while you were in Texas?

A. I went hunting and fishing, and built a little fence.

Q. What did you do around the ranch?

A. Just ordinary things that anyone would do around any ranch or home.

Q. Such as?

A. Milk the cow and feed the chickens.

Q. What else?

A. Well, it is rather hard to explain—everything I did.

Q. Why is it hard to explain, Mr. Thain? You did them, didn't you? A. Well, yes.

Q. Then why can't you explain them?

A. What do I do when I go home, after I am through working now?

Q. I don't know.

A. What do you do?

Q. I am not interested in what you do now. I am interested in [430] when you were at a ranch in Texas.

A. Well, I did exactly the same things I do now.

(Testimony of David Robert Thain.)

A. Oh, you did? A. Right.

Q. You cut garments down there in Texas?

A. No.

Q. On the side of a cow?

A. You said when I am home.

Q. I am talking about when you were helping or working for your mother on a ranch in Texas, and you understand that too, don't you?

A. I think so.

Q. What did you do to help your mother on the ranch in Texas? A. Well, I——

Q. Is that all you did, milk the cow and feed the chickens? A. Just about.

Q. Those are the ordinary things you did while you were on the ranch in Texas? A. Yes.

Q. Is that a lot of help to your mother?

A. She thought so.

Mr. Shapiro: I object to it as argumentative.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Nicoson): You say you came back in December, 1941? [431]

A. That's right.

Q. How did you happen to come back?

A. Because I wanted to.

Q. Is that the only reason? A. Yes.

Q. Ever have any conversation with Mr. Bothman about coming back? A. Sure.

Q. When? A. Before I left.

Q. Nothing before you came back? A. No.

Q. You knew that you would get a job when you came back, under any conditions, didn't you?

(Testimony of David Robert Thain.)

A. Certainly. I had already had that understanding.

Q. You are the brother of Lettie Lee, and you can get a job there any time you want?

A. I imagine so.

Mr. Nicoson: That is right. I think that is all.

Cross Examination

Q. (By Mr. Sokol) Naturally, you weren't there at the time of the strike in July,—

A. No.

Q. —1941?

A. No. I was away at the time. [432]

Q. So you don't know anything about what kind of work Eunice and Miss Lembke did—

A. I know of the kind of work they did before that.

Q. Wait a minute. Let me complete my question.

(Continuing) You don't know what kind of work they did during the year 1941?

A. No, I wasn't there.

Q. By the way, in what year did you first come there? A. About, approximately '36.

Q. You remember in 1936 that there was a strike of the garment workers?

A. We had no strike at our place.

Q. Do you remember in 1936 that there was a group of manufacturers got together, including Lettie Lee, and formed a group known as the South-

(Testimony of David Robert Thain.)

ern California Garment Manufacturers Association?

Mr. Shapiro: Just a moment.

The Witness: I don't know anything about that.

Q. (By Mr. Sokol) Did you work in the office at any time? A. No.

Q. Did Mr. Bothman discuss the Cutters local of the International Ladies' Garment Workers' Union with you? A. Never.

Q. Never mentioned it to you? A. Never.

[433]

Q. He said he spoke about it around at the plant. Did you hear him? A. No.

Q. You didn't. Now, didn't you tell Angelo Castella that you were quitting the job?

A. No.

Q. You didn't? A. No.

Q. Were you notified by Mr. Bothman that the Cutters local of the International Ladies' Garment Workers' Union was requesting that he bargain with them? A. No.

Q. You weren't? A. No.

Q. You at no time told him that you wanted to be included in the event of any bargaining; is that right? A. No, never did discuss it.

Mr. Sokol: That is all.

Redirect Examination

Q. (By Mr. Shapiro) One further question, Mr. Thain: Did you work at Lettie Lee some part of the month of January, 1941? A. Yes.

(Testimony of David Robert Thain.)

Q. For what part of that month did you work there?

A. Well, I left there the 15th, I believe. Yes, the 15th. [434]

Q. Do you know what kind of work Eunice Usher and Kathryn Lembke were doing in the month of January before you left?

Mr. Nicoson: I object to that is immaterial and irrelevant.

Trial Examiner Erickson: Overruled.

Q. (By Mr. Shapiro) Do you understand the question?

A. I have worked—I can't remember dates on these things. I have worked with all of these people that were there, and they have always done exactly the same type of work that I have, but I can't remember what they were doing in January.

Mr. Nicoson: I move to strike ou the answer because of its indefiniteness.

Mr. Shapiro: I submit, your Honor, it is a complete answer to the question.

Trial Examiner Erickson: It will stand.

Mr. Shapiro: Nothing further.

Recross Examination

Q. (By Mr. Sokol) What was Eunice Usher doing in January, 1941?

A. I just told you that I didn't remember exactly. I don't even know——

Q. Let's get a little closer to home.

A. I don't even know if she was there in January or not.

(Testimony of David Robert Thain.)

Mr. Nicoson: That is what I thought. Go ahead.

Q. (By Mr. Sokol) How about more recently? When was the [435] last time you saw her working?

A. Well, she was employed there when I came back in December.

Q. All right. Now, what was she doing in December? A. Cutting.

Q. What? A. Dresses.

Q. What kind of dresses?

A. Silk dresses, wool dresses, flannel dresses, all kinds of dresses.

Q. What did she do?

A. What did she do?

Q. Yes. A. She cut dresses.

Q. What did she do? That doesn't tell us anything. Give us the details of the work she did.

A. All right.

Q. Not what you did there.

A. Well, she did exactly the same thing I did.

Q. I am asking you, do you know, did you observe what she did? Did you see her at work?

A. Why, certainly.

Q. And you stood there and watched her work?

A. I passed by her table every day.

Q. How many times every day did you pass by her table? [436]

A. A hundred; maybe more.

Q. At what table was she at in December, 1941?

A. She works at the second table from the south wall, the partition wall.

(Testimony of David Robert Thain.)

Q. In December she worked at the second table——

A. That's right.

Q. ——from the south wall?

A. The south partition wall.

Q. In December did she do any sloping? Did you see her do any sloping?

A. Yes.

Q. Did you do sloping?

A. Yes.

Q. Did you do trimming?

A. Yes.

Q. And she did trimming?

A. Sure.

Mr. Sokol: Well, you are the expert on that, Mr. Nicoson. I have nothing further.

Mr. Nicoson: That is all. I don't have any more questions.

Q. (By Trial Examiner Erickson) What about Baliber?

A. I beg pardon?

Q. Did Baliber do sloping and trimming?

A. May I explain that in my own words, sir?

[437]

Q. Yes.

A. You see, as I already explained, every cutter has a certain amount of that to do. There is no one person, at least in our lineup, that is designated just to sloping, or just to do the other thing.

I oftentimes cut duplicates, whereby it is necessary for me to make my own markers, although we have a man who does nothing else but make markers. But it is always necessary for a cutter, though he has a marker for a part of the dress, it is always necessary for him to do some marking and some sloping on a particular style he happens to be working,

(Testimony of David Robert Thain.)

rather than to give it to a new person, who don't know oftentimes all the details, so oftentimes it entails sloping and the person who does the cutting, he does the whole thing.

Q. Don't you have one employee there known as the sloper?

A. No, we don't. We don't have anyone that does only that.

Q. Maybe not only that, but she is known as a sloper, isn't she?

A. No, sir. I don't know——

Q. Rather than a cutter? A. No.

Q. You don't have any such person?

A. No. [438]

Q. Didn't you ever have anyone, in your experience at Lettie Lee?

A. I have never known anyone who just sloped and did nothing else.

Q. Well, these girls that you have mentioned, did they do the same type of work that Baliber and the rest of the employees named in the complaint did—— A. Yes, sir.

Q. ——prior to the strike?

A. Yes, sir. There is positively no difference in the work that they did then or that they do now.

Mr. Nicoson: May I have that question and answer read, please?

Trial Examiner Erickson: Yes.

(The question and answer were read.)

Trial Examiner Erickson: You may have the witness.

(Testimony of David Robert Thain.)

Q. (By Mr. Nicoson) You don't know what they were doing prior to the strike, do you?

A. Well, while——

Q. You weren't there, were you?

A. I wasn't there.

Q. You weren't there from January, the middle of January, up until December, is that true?

A. You said before the strike, didn't you?

Q. That is right. [439]

A. Before the strike, I didn't know what they were doing?

Q. Before the strike, that is right.

A. They were employed there when I was employed, when I left in January.

Q. Can you say, of your own knowledge, that you knew what Kathryn Lembke and Eunice Usher were doing on June 1, 1941?

A. No. That was during the period that I was away.

Q. You don't know that. So you don't know what they did between January and December, do you, of your own knowledge?

A. Between January and December?

Q. 1941. A. No.

Mr. Nicoson: That is all. Thank you very much.

Q. (By Mr. Sokol) Did you get any wages in October, 1941? A. In October 1941?

Q. Yes. A. No.

Q. You weren't there in October, 1941?

(Testimony of David Robert Thain.)

A. No.

Mr. Sokol: That is all.

Mr. Shapiro: Nothing further.

Trial Examiner Erickson: I see you have the payroll there in front of you, Mr. Sokol. Is Mr. Thain's name listed with the other cutters in that group that Mr. Bothman [440] testified to yesterday?

Mr. Shapiro: May I answer that? It is, your Honor, and the blotter marks the place where his name appears.

Mr. Sokol: In January, you mean?

Mr. Shapiro: Yes, in January.

Trial Examiner Erickson: I mean, his name continues right through then until the following December?

Mr. Nicoson: No, it does not.

Mr. Shapiro: Not as having received pay.

Trial Examiner Erickson: Well, there is a line, as I understand it, that runs right through the book, that would have been his, if he had been listed?

Mr. Shapiro: I think Mr. Bothman can explain that. He is more familiar with the book than I am.

Mr. Nicoson: Let's find out what the payroll here shows.

Mr. Shapiro: You will recall that yesterday Mr. Bothman testified that he thought that Mr. Thain's name did not appear in the 1941 ledger, because he thought possibly he had left in 1940, and that his name had not been carried into the 1941 records, but his name is there.

(Testimony of David Robert Thain.)

Trial Examiner Erickson: Now what position does he occupy in that group of names? That is, what number is his name?

Mr. Shapiro: Show us this, will you, Mr. Bothman? [441]

Mr. Nicoson: As a matter of fact, if you want me to check from the record, I am now examining the payroll and Mr. Thain does not show on the payroll commencing on March 28, 1941. The payroll from January 1st up to March 28, 1941 shows that Mr. Thain last worked in the week ending January 17, 1941. From there on up until March 28th there is a blank space, at which time, on March 28th, his name is dropped entirely from the payroll.

Trial Examiner Erickson: All right. That is what I wanted to know. Step down.

(Witness excused.)

Mr. Shapiro: Your Honor wanted to know under what classification or grouping he appeared. In January, 1941 he appeared as the fourth name under the cutters.

Trial Examiner Erickson: That is right. But he is dropped from the payroll as of that March date?

Mr. Nicoson: That is right.

Mr. Shapiro: He isn't dropped.

Trial Examiner Erickson: I mean, in accordance with the testimony that was given yesterday?

Mr. Shapiro: After March, apparently, his

name does not appear on the payroll for the reason that has been given.

Trial Examiner Erickson: Wasn't the testimony yesterday that any person that was considered an employee was still carried in that block of names?

[442]

Mr. Bothman: Not necessarily.

Mr. Shapiro: Not necessarily.

Trial Examiner Erickson: All right. Proceed. The record will show.

Mr. Shapiro: I will clear that up with Mr. Bothman when I put him on. I will call Mr. Litwin.

MORTIMER LITWIN

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Shapiro) Will you state your name, please?

A. Mortimer Litwin, L-i-t-w-i-n.

Q. Where are you employed?

A. Lettie Lee, Inc.

Q. How long have you been working there?

A. Approximately three and a half years.

Q. Has that been continuously? A. Yes.

Q. Were you working there in the months of June and July, 1941? A. Yes.

(Testimony of Mortimer Litwin.)

Q. Were you working there on July 24, 1941 when a strike was called? A. I was.

Q. In what capacity were you employed in June and July of [443] 1941?

A. As a marker and cutter.

Q. Now, will you state to the Court what you mean by a marker?

A. Well, those different parts of the dress are placed on the strip of paper, the width of the material to be cut, and marked in in a certain way so as to take the least amount of material. And usually carbon copies of this principal marker is made, of each size, and is rolled up for future use by the cutters.

Q. Do all of the cutters make marks or markers?

A. Yes, they sometimes do.

Q. Was there any particular cutter who was assigned to make most of the marks?

A. That was me.

Q. You say you are also a cutter?

A. That's right.

Q. Will you state what you did, what services you performed as a cutter?

A. Well, when the marks were completed, or I hadn't anything to do at that time, any more marking, I did cutting, essentially the same as the other cutters did or are doing.

Q. Now, will you state to the Court what operations you performed in cutting a dress? Start in from the very first operation. [444]

A. Well, a piece of paper was rolled down on a

(Testimony of Mortimer Litwin.)

long table the width of the material to be cut, and the material was placed on this paper, evened off on both sides, and the markers placed on top of the material, weighted down, and then cut out with a shears or a knife, depending upon the amount of ply, and the dress was then rolled up and sent to the assorting tables.

Q. Do you know Eunice Usher? A. I do.

Q. Do you know Kathryn Lembke?

A. I do.

Q. Do you know Dorothy Richard?

A. I do.

Q. What work did they do at Lettie Lee?

A. They do cutting.

Q. Will you state to the Court what work these girls did, and describe it.

Trial Examiner Erickson: At what time do you mean now, Mr. Shapiro?

Q. (By Mr. Shapiro) Let's first take the period immediately preceding July 24, 1941. That would be the day before the strike.

A. Well, they did cutting then, as now.

Q. All right. Tell us what they did.

A. Well, they rolled out their paper and laid out their [445] material, according to their tickets, style number, color, and size, and they went for those markers which I made, in those bins there, and putting the correct size on the material, they weighted it down, and they cut it then either with the machine or with the knife. And after it was all cut up, they would bundle it up and send it down

(Testimony of Mortimer Litwin.)

to the assorters, and if there was any trimmings to be cut, after the dress as a whole was cut out, they did that too.

Q. Did the girls cut any trims?

A. They did.

Q. Did they do any sloping?

A. They did that too.

Q. Did the men cutters cut any trims?

A. Yes, sir.

Q. Did they do any sloping?

A. They did.

Q. Did the men cutters do any other or different type of work than the girls? A. No.

Q. Now, directing your attention to the 11th day of June, 1941, did you attend the meeting at the cutting room of the plant at about 4:30?

A. I did.

Q. Who else was there?

A. The rest of the cutters, and Mr. Bothman.

[446]

Mr. Nicoson: I object. That is not an answer. Let him state the names.

Q. (By Mr. Shapiro) Well, give us the names of them.

A. Well, Vito, Sardo, Baliber, Quinn, and Castella, and another fellow there, Nolan, and Mr. Bothman, and myself, and Lou Swartz.

Q. Were any of the girls there?

A. No, they weren't.

Q. By the way, do you belong to this Cutters local? A. I do not.

(Testimony of Mortimer Litwin.)

Q. Were you asked to join?

A. No. I wasn't asked to join.

Q. Now, what was the purpose or the occasion for this meeting of June 11, 1941?

A. Well, the boys banded together for an increase in salary, and they got Mr. Bothman, they wanted to see if he would give it to them.

Q. Did they tell you that there was going to be a meeting at that time for that purpose?

A. There may have been something hinted. I am not sure.

Q. But, in any event, you were there?

A. I was there at the meeting.

Q. Will you state, in substance, what was said at that meeting?

A. Well, the boys asked for an increase in salary, and Mr. [447] Bothman said——

Q. Just a minute. You said, "The boys." They didn't all talk at once, did they? Or, who was the spokesman? Tell us who spoke and what he said.

A. I believe Mr. Sardo was the spokesman.

Q. What did he say?

A. He asked for an increase in salary on behalf of the boys.

Q. To whom did he address that remark?

A. Mr. Bothman.

Q. What did Mr. Bothman say?

A. Well, he said he would either give them an increase in salary, or he wouldn't put on an extra man when it got busy and pay them time and a half for overtime.

(Testimony of Mortimer Litwin.)

Q. Was there anything else said at that meeting by anybody?

A. No, there wasn't anything.

Q. Was there any decision arrived at at that meeting, as to what form of increase the boys would take? A. Not at that meeting.

Q. Was there anything said by Mr. Bothman about any union at that time? A. No.

Q. Was there anything said by anybody about a union? A. No.

Q. Did Mr. Bothman state that the union were a bunch of [448] shysters?

A. I don't recall any such statement.

Q. You don't remember any conversation about unions? A. No.

Q. All right. Do you remember a meeting a day or two later? A. Yes.

Q. And where was that?

A. In the same place, at about the same time.

Q. And who was present?

A. The same members as at the first meeting.

Q. Will you state the conversation?

A. Well, the boys had decided and spoke through Mr. Sardo that they wanted—they preferred the increase in salary to the other alternative, and Mr. Bothman said that was perfectly all right, starting from, I believe next week, that the increase would be effective.

Q. Did he say how much the increase would be?

A. Yes, he did.

(Testimony of Mortimer Litwin.)

Q. What did he say?

A. He said the pay would be increased 15 cents an hour.

Q. What did the boys say, if they said anything?

A. They seemed satisfied with the amount.

Mr. Nicoson: I object to what they seemed.

Trial Examiner Erickson: Sustained. [449]

Mr. Nicoson: I move to strike the answer as not responsive.

Trial Examiner Erickson: It may be stricken.

Q. (By Mr. Shapiro) Will you state what they said, rather than your conclusion?

A. They said that would be all right.

Mr. Nicoson: I object to that, unless he indicates who said it.

Q. (By Mr. Shapiro) Do you remember who said it?

A. Well, since he was speaking to Mr. Sardo, Mr. Sardo said that, I believe.

Q. Did anything else take place at that meeting?

A. I believe Mr. Bothman asked them if any of them belonged to the union.

Q. Was that before or after he told them that they could have an increase of 15 cents an hour?

A. That was after.

Q. Did Mr. Bothman state that if any of the boys joined the union, they could not have the raise?

Mr. Sokol: Just a moment. I object to that.

Mr. Nicoson: I join in the objection as being leading.

(Testimony of Mortimer Litwin.)

Trial Examiner Erickson: The objection is overruled.

The Witness: No, he did not.

Q. (By Mr. Shapiro) Did Mr. Bothman state that if any of the boys joined a union that they would be fired or would [450] lose their jobs?

A. No.

Mr. Nicoson: I object to that, for the same reason.

Trial Examiner Erickson: Are you now propounding questions that are supposed to have been answers heretofore given by other witnesses for the Board?

Mr. Shapiro: Yes, your Honor.

Trial Examiner Erickson: He may answer.

Mr. Sokol: But it is not a correct question.

Mr. Nicoson: No, certainly, and doesn't even purport to be.

Trial Examiner Erickson: That is what I asked you. He may have his notes there, and is that the testimony that was given?

Mr. Shapiro: Do I understand you correctly: Did you mean that as to the boys who went on strike, did they testify that Mr. Bothman said those things?

Trial Examiner Erickson: Yes, in those words.

Mr. Shapiro: No, not in those words.

Trial Examiner Erickson: Then reframe your question.

Mr. Nicoson: I move to strike it out.

Trial Examiner Erickson: It will be stricken.

(Testimony of Mortimer Litwin.)

Q. (By Mr. Shapiro) Outside of asking the boys if any of them belonged to the union, did Mr. Bothman say anything else about the union? [451]

A. No, he did not.

Q. Did you go out on the strike?

A. I didn't come back to work the day the strike was called.

Mr. Nicoson: I object to that as being unresponsive.

Trial Examiner Erickson: Just answer the question, please.

Mr. Nicoson: I move to strike out the answer.

Trial Examiner Erickson: It may be stricken.

The Witness: Yes, I did.

Q. (By Mr. Shapiro) When did you return to work?

A. I believe it was three or four days later. I am not quite sure.

Q. And you worked continuously since?

A. I have.

Mr. Shapiro: You may cross examine.

Trial Examiner Erickson: We will recess for five minutes.

(A short recess was had.)

Trial Examiner Erickson: The proceeding will come to order.

Mr. Shapiro: He is your witness, counsel.

Cross Examination

Q. (By Mr. Nicoson) What were you doing on July 24, 1941? A. Marking and cutting.

(Testimony of Mortimer Litwin.)

Q. Did you do any marking and cutting that day? [452] A. Undoubtedly.

Q. Undoubtedly. You are sure you did?

A. Why, sure.

Q. You are positive about it? As a matter of fact, that was the day of the strike, wasn't it?

A. I don't recall dates. I just assumed I was working.

Q. If it was the date of the strike, you didn't do any marking and cutting on that day, did you?

A. Correct.

Q. That is right. Now, let's go back to June, 1941, and you tell me where Eunice Usher was working in that month.

A. June, 1941. She was on the other end of the table she is working on right now.

Q. And where is that table located?

A. That is the second table from the south partition.

Q. Did you say "south partition"?

A. That's right.

Q. Now, which is the south partition?

A. Second from the south——

Q. Of the partition? A. That's right.

Q. There is only one partition there, isn't there?

A. Yes.

Q. How much of the time would you say that these girls performed cutting operations at that time? [453]

A. Oh, possibly four-fifths of their time.

(Testimony of Mortimer Litwin.)

Q. Four-fifths of their time. How much of the garment has to be sloped?

A. Well, it depends on the garment and the style. On the styles where there is sloping, there is usually a front that comes back, a tucked front or a pleated skirt, that has to be sloped.

Q. When Miss Lembke said a while ago on the witness stand that the biggest portion of her time was devoted to cutting of these paddings, and the like of that, her statement was incorrect, is that so?

A. Well, she cuts dresses and she cuts paddings.

Q. Well, tell me, is it true or not?

A. It's true.

Q. It is true? A. Yes.

Q. What she said is true? A. Yes.

Q. That's right. Then it would not be four-fifths of the time; would it? A. No.

Q. I believe you said something about the second meeting that you had with Mr. Bothman concerning the raise, that he said it would be effective as of the next week?

A. Approximately, yes. [454]

Q. What do you mean, approximately?

A. I don't remember whether it was effective the next day or the next week; certainly, not longer than that.

Q. I am not asking you as to when it was, but I am asking you what he said about it.

A. I believe he said the next week.

Q. But, as a matter of fact, you got it that week for the entire week, didn't you?

(Testimony of Mortimer Litwin.)

A. Yes, we did.

Q. Now, when did you go back to work after the strike, did you say?

A. Three or four days after.

Q. As a normal thing, prior to the strike the biggest portion of your time was taken up in marking, wasn't it?

A. The biggest portion, yes.

Q. About how much would you say? Three-fourths?

A. Three-fourths.

Q. And the rest was cutting?

A. Cutting.

Q. Now, what are you doing?

A. The same thing as I was doing then, marking and cutting.

Q. Let's begin with the week of the strike. Rather, let's take the week after the strike began, so that we can get a full week, and did you do more cutting in that week than you did prior to that time? [455]

A. No.

Q. You worked some 79 hours that week, didn't you?

A. That's right.

Q. And would you say that all of that 79 hours was devoted, three-fourths of it, to marking?

A. No, it wasn't.

Q. As a matter of fact, your cutting, your actual cutting duties, were increased considerably on account of the strike, weren't they?

A. Yes.

Q. So that at least half of your time was devoted to cutting?

A. That's right.

Q. Right. Whereas previous to that you did not devote so much time to it?

A. For a very good reason.

(Testimony of Mortimer Litwin.)

Q. I beg your pardon?

A. For a very good reason.

Q. I am not asking you for the reason at the moment. I am asking you what the facts were.

A. That's right.

Mr. Shapiro: May I suggest that the witness be allowed to give his reason now?

Trial Examiner Erickson: You will have the witness again. [456]

Mr. Nicoson: I am going to object to counsel trying to instruct the witness on cross examination. This is about the third time. I think he should be admonished.

Trial Examiner Erickson: Proceed.

Q. (By Mr. Nicoson) Since that time you have worked considerable overtime, haven't you?

A. Yes.

Q. And during that overtime your actual cutting performance has been materially increased over what it was prior to the strike; that is true, isn't it?

A. Correct.

Q. So that at the present time you are devoting at least half of your time to cutting?

A. That is correct.

Mr Nicoson: That is all.

Cross Examination

Q. (By Mr. Sokol) Mr. Litwin, you lived on July 24, 1941 at 6226 Drexel Avenue?

A. That is right.

Q. With Mr. Swartz?

A. That is right.

(Testimony of Mortimer Litwin.)

Q. You were out on strike? You came out on the strike? A. I was out, yes.

Q. And you got paid by the company for the days that you were out on strike, didn't you? [457]

A. No, I don't believe I did, as I recall it.

Q. You went up to the union headquarters, didn't you? A. I was there.

Q. Well, you didn't get paid for July 24th, but you got paid for the other days that you were out on strike, didn't you?

A. I don't recall getting paid for the days I was out on strike.

Mr. Sokol: That is all.

Redirect Examination

Q. (By Mr. Shapiro) Mr. Litwin, is cutting trim and paddings a part of the operation of the cutting trade? A. It is.

Q. You testified on cross examination that there was a reason why you spent more time cutting after the strike and less marking, than before.

A. I did.

Q. Will you state the reason?

A. Well, since there was less cutters in the cutting room at the time, making one mark or a set of markers necessitated cutting up the orders for that mark, and would take more time doing the cutting than it would just marking.

Mr. Shapiro: Will your Honor bear with me just a moment?

Trial Examiner Erickson: Go ahead. [458]

(A short interruption.)

(Testimony of Mortimer Litwin.)

Q. (By Mr. Shapiro) What was the reason that you had more time for cutting after the strike than you had before?

A. Well, in order to get out the same amount of work, there would naturally be more cutting for me than marking, since the other boys weren't there to do it; and, well, there is always more cutting than marking.

Mr. Shapiro: Your Honor, if I may go back to a subject that I developed on direct, I have checked my notes since and I think I can confine myself to the Board's limitations.

Trial Examiner Erickson: You may.

Q. (By Mr. Shapiro) At the first meeting on June 11th did you hear Mr. Bothman state: "How many of you boys belong to the union"?

A. Not at the first meeting.

Q. At the first meeting did you hear Mr. Bothman state, "The union are a bunch of shysters and they are not out to help you"?

A. No.

Q. Did you hear Mr. Bothman state in the first meeting, "They are only out to help themselves"?

A. No, I didn't.

Q. Did you hear Mr. Bothman state that "the union would put in more cutters, and in that way you won't get as much work as you are getting now"? Did you hear him state that at the [459] first meeting?

A. No.

Q. Did you hear Mr. Bothman state at the first meeting that he will close his shop before he operated under the union?

A. No.

(Testimony of Mortimer Litwin.)

Mr. Shapiro: That is all.

Recross Examination

Q. (By Mr. Nicoson) Did you hear him say that at the second meeting?

A. No, he didn't say that.

Q. What did he say at the second meeting?

A. He asked the boys if they belonged to the union, to any union.

Q. Was that all? A. That is all.

Q. You are sure that took place at the second meeting? A. At the second meeting.

Q. Do you have any knowledge as to why he asked that question? A. No, I haven't.

Q. Did you ever discuss the union with him?

A. I did not.

Q. At no time? A. At no time. [460]

Q. Had you discussed the union with Mr. Swartz? A. No, I haven't.

Q. You are a relative of Mr. Swartz, aren't you?

A. I am.

Q. You are his brother-in-law?

A. That is right.

Q. And you live with him all the time?

A. I do.

Q. And you did at that time? A. I did.

Q. Mr. Swartz is your foreman, is he not?

A. That is right.

Q. How long does it take to become a marker?

A. Oh, a year or so, or six months. It depends on the individual.

(Testimony of Mortimer Litwin.)

Q. A year or six months? A. Yes.

Q. How long does it take to learn how to grade a pattern?

A. Well, that is a little more complicated. I would say a year to three years.

Q. A year to three years? A. Yes.

Trial Examiner Erickson: Speak up.

The Witness: Yes, a year to three years.

Q. (By Mr. Nicoson) How long does it take to learn how to [461] run a power knife?

A. Two to three months.

Q. How long does it take to learn to properly mark a piece of cloth?

A. Oh, three or four months.

Q. Anyone can do it in three or four months?

A. Anyone but an imbecile, I imagine.

Q. Can you? A. I can.

Q. Did you? A. I have.

Q. How long did it take you to learn to be a marker? A. About a year.

Q. Where did you learn?

A. In New York.

Q. Whereabouts in New York?

A. 498 7th Avenue, J. M. Silverman Company.

Q. J. M. what?

A. J. M. Silverman Company.

Q. How long did you work there?

A. Two years.

Q. What were those two years that you worked for them? A. I beg your pardon.

(Testimony of Mortimer Litwin.)

Q. What two years did you work for that company?

A. Well, that was about 10 years ago. [462]

Q. What two years did you work for them?

A. 1930 and 1931.

Q. 1930 and 1931?

A. Approximately. I am not sure.

Q. Where did you work after you left Silverman and Company?

A. I came out here and worked at Annette Blouse.

Q. Annette Blouse? A. That is right.

Q. Where is that?

A. That is near Olympic on South Los Angeles Street.

Q. What did you do there?

A. I was a cutter on women's blouses.

Q. Did you do any marking there?

A. I did.

Q. How much of your time was devoted to marking? A. About half and half.

Q. How long did you stay there?

A. I was there about a year and a half.

Q. Where did you work after Annette Blouse?

A. Violet Tatum.

Q. Where is that located?

A. That is 9th and Broadway Building, I believe. She may have moved since.

Q. What did you do there?

A. Cutter and marker. [463]

Q. How long did you stay there?

(Testimony of Mortimer Litwin.)

A. I was there about a year.

Q. Where did you go from there?

A. William J. Markowitz.

Q. Where is that located?

A. 719 South Los Angeles Street.

Q. That is in the same building with Lettie Lee?

A. That's right.

Q. Right? A. Right.

Q. How long did you stay there?

A. Two years.

Q. Where did you go from there?

A. Lettie Lee, Inc.

Q. When did you begin working for Lettie Lee?

A. About three years ago.

Q. What did you do for Markowitz?

A. I was a cutter for Markowitz.

Q. Didn't you do any marking?

A. No, I didn't.

Q. What did you do when you first went to work for Lettie Lee? A. I was a cutter there.

Q. Did Mr. Swartz get you your job there?

A. He did. [464]

Q. You didn't do any marking when you began working there? A. I didn't, no.

Q. When did you begin marking?

A. When I was there about two years.

Q. You have been a marker ever since?

A. That's right.

Mr. Nicoson: That is all.

Mr. Shapiro: Any questions, Mr. Sokol?

Mr. Sokol: No.

(Testimony of Mortimer Litwin.)

Mr. Shapiro: Nothing further. You may step down.

Trial Examiner Erickson: I have only one question. That is: These operations that Mr. Nicoson asked you about, that is, the time it takes to learn those operations, do you learn them all during the same period, or do you learn one job at a time?

The Witness: No, your Honor. You can only learn one at a time.

Trial Examiner Erickson: Yes, all right. So that, to learn all the operations, you would have to combine all the time that you gave?

The Witness: That's right.

Trial Examiner Erickson: All right.

(Witness excused.)

Mr. Shapiro: Mr. Swartz. [465]

LOUIS SWARTZ

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Shapiro: Mr. Swartz, would you mind stepping down for just a minute?

May I recall Mr. Litwin for just one question?

Trial Examiner Erickson: Yes.

(Witness temporarily excused.)

Mr. Shapiro: Will you take the stand again?

MORTIMER LITWIN

recalled as a witness by and on behalf of the respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Shapiro:

Q. Did I understand your answer correctly to the Court that in order to learn to be a cutter and a marker that you would have to take the total of the period that you spent learning to make a mark and the period that you learned to cut, and add the two, and that you couldn't learn to be a cutter and a marker at the same time?

A. Well, possibly you could if you were both marking and cutting at the same time while learning.

Q. How long—— [466]

A. (Continuing) Possibly I didn't make that very clear.

Q. How long does it take to learn to become a marker?

Mr. Nicoson: I object to that, an attempt to impeach his own witness.

Mr. Shapiro: It is redirect.

Trial Examiner Erickson: He may answer.

Mr. Shapiro: I didn't ask him about that.

The Witness: I believe about two years.

Q. (By Mr. Shapiro) How long would it take to learn to become a cutter?

A. About a year.

Q. And which is the most difficult operation?

A. Well, one requires manual skill, and that is

(Testimony of Mortimer Litwin.)

cutting, and the other, marking, requires a little ingenuity in marking out the patterns.

Q. Did you also testify to how long it takes to learn to grade? A. I did.

Q. And how long does that take?

A. It takes about a year.

Q. Which is the most difficult operation of the three, grading, marking, or cutting?

A. Grading is.

Q. What is your answer then, so that it is clear in my mind, as to how long it would take to learn to mark and cut? [467]

A. About two years.

Q. In your opinion, if you are working as a cutter, can you learn to mark, while you are working as a cutter?

A. Yes, because you have to mark out the patterns first in order to cut, after the marker is made. One is interwound with the other.

Mr. Shapiro: That is all.

Cross Examination

Q. (By Mr. Nicolson) Can a person who has never had any experience in the garment trade, come into a plant and begin cutting right off the bat? A. He could.

Q. With the power knife? A. No, sir.

Q. Not with the power knife?

A. No. Everyone handles a shears at one time.

Q. It is just like cutting out a dress at home?

A. That's right.

(Testimony of Mortimer Litwin.)

Q. But they couldn't use the power knife the first time they came in?

A. Not if he wasn't acquainted with it.

Q. Now, how long would you say it would take an ordinary person to become qualified as a cutter, so that he can mark, grade, and operate the power knife, the hand shears, the short knife, and such other knives as they do use? [468]

A. Well, it is hard to say. I imagine three or four years.

Q. Three or four years?

A. Something like that.

Mr. Nicoson: Thank you, sir.

Mr. Shapiro: Nothing further.

Trial Examiner Erickson: Step down.

(Witness excused.)

Mr. Shapiro: Mr. Swartz.

LOUIS SWARTZ

resumed the stand as a witness by and on behalf of the respondent, having been previously duly sworn, testified as follows:

Direct Examination

By Mr. Shapiro:

Q. Where are you employed Mr. Swartz?

A. Lettie Lee, Inc.

Q. How long have you been working there?

A. Approximately six and half years.

(Testimony of Louis Swartz.)

Q. In what capacity?

A. Now, or when I was employed?

Q. Well, what is your capacity now?

A. I am in charge of the cutting room.

Q. What was your work when you first went to work for Lettie Lee? A. A cutter. [469]

Q. How long have you been in charge of the cutting room? A. The past three years.

Q. How many cutters did you employ on July 24, 1941?

Mr. Nicoson: I object to that. The payroll is the best evidence.

Mr. Shapiro: The man is in charge of the cutting room. He is qualified to answer.

Trial Examiner Erickson: He may answer.

The Witness: You will have to place the date. Is that after the strike?

Q. (By Mr. Shapiro) That is the day of the strike.

A. I didn't employ any. I wasn't at the plant myself.

Q. The day before, or July 23, 1941.

A. I didn't employ any.

Q. Do you know how many cutters were there?

A. That were working there?

Q. Yes. A. 10.

Q. Exclusive of yourself, or including yourself?

A. Including myself.

Q. Now, will you explain to the Court what your system or mode of operation is with respect to the cutting room? How does it function?

(Testimony of Louis Swartz.)

A. Well, in employing a cutter, the cutter has got to be capable of doing everything in the cutting room, anything [470] that calls for the operation in the cutting of a garment, and when they work in there a while, one cutter might show that he is more capable of doing one particular thing better than another, and I segregate them that way, to the increase of production. If at any time one portion of it is held up, I still have the opportunity of switching from one cutter to the other to help out the ones that slow it up.

Q. Now, will you state to the Court whether or not in cutting a garment you draw any distinction between sloping and the other cutting operations?

A. No, I do not.

Q. Will you state to the Court, in your own way, exactly what the operation of cutting a dress involves, start in from the very first.

A. Well, the first, original pattern will come out of the designing room, and it is turned over for grading. When the pattern is properly graded, each individual size made, or pattern size, it is turned over to the marker.

Q. Just a minute before you get to that stage. Just what do you mean by grading a pattern?

A. Well, the original pattern is size 10. It is the smallest size we make, and the largest size we make is the size 20. In order to make all those sizes, you have got to take the size 10 pattern and continue on up and make a pattern of each size. [471]

(Testimony of Louis Swartz.)

Q. Who does the grading at Lettie Lee?

A. At present, I do.

Q. How long have you been doing the grading?

A. Since I am in charge of the department, which is approximately three years.

Q. Do any of the other cutters ordinarily do any grading?

A. There is only one cutter that helps me with grading, and that is Eunice Usher.

Q. Does the work of grading a pattern involve any particular knowledge or skill?

A. Well, I think so.

Q. Do you know whether or not Vito Cimarusti ever did any grading at Lettie Lee?

A. Well, I think he claimed that he could do grading, but as far as I know, he has never done any for me.

Q. Did Angelo Castella do any grading?

A. No, the only cutter that ever worked for me that did any grading was Eunice Usher.

Q. But I will go through the list, if I may; Mort Litwin,—

A. No.

Q. —Joe Sardo, Lou Baliber, Don Quinn, Nolan Berteaux, did any of those people do any grading?

A. No, sir.

Q. Now, you had reached the point where the pattern is graded and you make the marker. Now, what is a marker? [472]

A. Well, a marker is a piece of paper with the pattern laid on it, as closely as possible, not to waste any material.

(Testimony of Louis Swartz.)

The system we use now, we will lay up a number of sheets of paper with carbon paper in between, and make our marker that way, so as not to have to go through the procedure again of laying out the pattern every time you go to make a cut, because laying out the pattern involves a lot of time and knowledge.

Q. Now, who in the cutting department makes the markers?

A. Right now Mort Litwin.

Q. On July 23rd, the day preceding the strike, who made the markers?

A. Well, at that time it wasn't necessitated, because the line was completely marked. We have a certain amount of numbers in the line, and when those numbers first come out, all those numbers have to be marked. When all those markers are made, until other new numbers come out, there are no other markers necessary to be made.

Q. So that all that has to be done is to put a cutter—

A. Is to take the markers, lay up the material and cut the dress.

Q. Are you acquainted with the term, chopper?

A. Yes.

Q. In the manufacturing industry? [473]

A. It is a very common name in the industry.

Q. What is it understood to mean?

A. Well, it is more or less an apprentice in the trade, that wants to learn to become a cutter, and

(Testimony of Louis Swartz.)

his duties are entirely the laying up of material, and then cutting it out, doing nothing else.

Q. In the Lettie Lee cutting department, did you require or did you employ full-fledged cutters, as distinguished from choppers?

A. I don't understand that question.

Mr. Shapiro: Will you read it back, and if you still can't understand it, I will reframe it.

(The question was read.)

The Witness: No, I did not.

Q. (By Mr. Shapiro) In other words, do I understand you to mean that the people you employed as cutters were choppers?

A. Well, they—

Mr. Nicoson: I object to that. That is certainly testifying into the record.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro) Could an ordinary chopper do the cutting work required by the Lettie Lee factory? A. Yes.

Mr. Nicoson: I object to that until he shows what—I withdraw it. Sorry. [474]

Q. (By Mr. Shapiro) Now, in the work of cutting a dress—I don't recall if I asked this question or not—do you draw any distinction between sloping and the other cutting operations?

A. No.

Mr. Nicoson: I object to that. He has already answered that.

Trial Examiner Erickson: Let it stand. He has answered it.

(Testimony of Louis Swartz.)

Q. (By Mr. Shapiro) Do you designate any particular person for the sloping operations?

A. Well, as I explained before, when I employ a person, when I see they excel in doing one thing more so than another, I try to keep them on doing that one particular thing as long as I can.

Q. In your opinion, does it require greater skill and ability to slope a dress than to cut it?

A. Yes, it does.

Q. Now, you know Dorothy Richard, Kathryn Lembke, and Eunice Usher, do you not?

A. Yes, I do.

Q. Will you state to the Court and describe the kind of work they did at the factory, immediately preceding the time of the strike?

Mr. Nicoson: Just a minute. Is that collectively or [475] individually?

Q. (By Mr. Shapiro) Take them one at a time. Take Eunice Usher.

A. I can't say any more other than they did everything that was required of a cutter to do.

Mr. Nicoson: I object to that and move to strike as not responsive.

The Witness: I could, if you want me to, enumerate everything they should do.

Trial Examiner Erickson: All right. I will strike it.

Mr. Nicoson: Not what they should do. What they did do.

The Witness: All right, what they did do.

(Testimony of Louis Swartz.)

Q. (By Mr. Shapiro) All right. Tell us what Eunice Usher did.

A. You mean, you want to know exactly what she did the first day, or what she does every day.

Q. What she was doing immediately before July 24th.

A. Well, that is hard to remember. She might have been grading patterns, she might have been cutting, she might have been sloping.

Q. Well, assuming that she was performing the usual duties assigned to her in connection with the cutting of a dress, will you state what she did? [476]

A. Well, all those duties I just stated are assigned to her; grading, sloping, and cutting.

Q. Well, apparently counsel wants us to repeat it rather than summarize it, so will you state what Eunice Usher did in cutting a dress?

A. Well, in cutting a dress she would get her ticket, and go over to the bin and get her marker, call the stock girl for her material; the stock girl would bring her material, and she would lay it up, put the marker on top, and cut out the lines.

Q. And what did Kathryn Lembke do?

A. The same thing. You mean, right after the strike?

Q. The last time that she was working at the factory before the strike was called.

A. The same thing.

Q. And what did Dorothy Richard do?

A. The same thing.

Q. Did these girls that I have named do any-

(Testimony of Louis Swartz.)

thing other or different than what the men cutters did?

Mr. Sokol: Just a minute. That is calling for the conclusion of the witness. I object on that ground.

Trial Examiner Erickson: He may answer.

The Witness: What was the question again?

Mr. Shapiro: Will you read it, please?

(The question was read.) [477]

The Witness: No.

Q. (By Mr. Shapiro) Do you know how many departments there are in the Lettie Lee plant?

A. Well, how far do you want me to include? Do you want me to include sales, shipping, receiving?

Q. No, start at the very beginning and go through all the departments in the plant.

A. Do you want to include all the manufacturing?

Q. Yes, in the manufacturing.

A. Well, the first department would be the designing department. The second would be the stock room. The third would be the cutting room. The fourth would be the operating room. The fifth is the second drapers.

Mr. Nicoson: I beg your pardon?

The Witness: The fifth is the second drapers.

Mr. Nicoson: The second drapers.

The Witness: The sixth are the pressers. The seventh are the first drapers. The eighth are the finishers. Pardon me. I skipped one in between

(Testimony of Louis Swartz.)

there. I skipped the second finishers in between the pressers and the drapers.

Q. (By Mr. Shapiro) Have you finished insofar as—— A. No.

Q. Go ahead.

A. Then we have the first finishers, and then the examiner.

Q. And after the dress has gone through the examiner, is [478] it finished? A. Yes.

Q. And ready to go out on the market?

A. Ready to go into the shipping room.

Q. When the cutters have finished cutting a dress, what do they do with it?

A. They take it up to the assorters.

Q. What do the assorters do?

A. They check on the cutting, segregate the pieces, bundle them into individual colors and sizes, and turn them over to the factory.

Q. For what purpose?

A. To be operated.

Q. You mean to be sewn together?

A. To be sewn together.

Q. Could the dress, as cut by the cutters, go to the operators, without first passing through the hands of the—— A. The assorters.

Q. ——the assorters?

A. Well, yes and no. If it did go through, it would have to come back four or five times to have certain things marked on it that it would be required to have the operator have.

Q. Well, as a practical matter?

(Testimony of Louis Swartz.)

A. No, definitely.

Q. Will you explain to the Court why it is essential that [479] after the dress is cut by the cutters that it go to the assorters?

A. Well, when an operator is assembling her dress, there are a lot of materials where it is hard to determine the right and the wrong side of the material, and if they didn't have the wrong or the right side marked for them, they could possibly sew up the dress half on one side of the material, and half on the other side. It is the assorters' work to mark around, mark either the wrong or right side of the material, so that the operator would know which way to sew the material into the dress.

Q. What other duties do the assorters have?

A. Well, there are darts that are in the dress which are style lines.

Q. Will you explain what you mean by that?

A. Well, a dart is a style line of a dress, and those darts have to be marked on there for the operator to sew.

Q. And who marks the darts?

A. The assorters.

Q. Those darts are then not on the dress when the dress is cut by the cutter? Is that correct?

A. No.

Q. What work does the assorter do?

A. Well, it is their duty to match a zipper, and put the zipper into the bundle to go to the operator. [480]

Q. Anything else that the assorter does?

(Testimony of Louis Swartz.)

A. Well, when a cutter cuts a dress, if he is cutting more than one, he might have eight dresses size 16 to cut, and there might be four different colors, and when he turns it over to the assorter, she would segregate these colors, separate them, rather, because you can't give two different colors to an operator to sew.

Q. Is the process of assorting a dress an essential part of the work necessary between the time the dress is cut and the time that it is delivered to the operating department? A. Definitely.

Q. When the cutter finishes the cutting operation, is the dress complete in any sense?

A. No, in no sense whatsoever.

Q. What does the cutter have after he has cut the dress?

A. Well, he has got possibly four or five yards of material, cut up in little pieces that don't mean anything until they are put together.

Q. When, in the process of manufacturing the dress, does the dress first become a completed, finished product?

A. Never until it passes the second—the first finisher.

Q. And about how many operations is that after the first operation of cutting?

A. Oh, I would say nine or ten.

Q. Now, is it possible, Mr. Swartz, for the various and [481] different manufacturing departments of Lettie Lee to function without the others?

A. No, I would think it is impossible.

(Testimony of Louis Swartz.)

Q. And will you explain why?

A. Well, if you took some material and cut it up, you can't go out and sell that as a dress. It would have to be sewn up. And you can't take four or five yards of material, and take it over to an operator, and say, "Here, sew up the dress," unless you cut it up for them. And after the operator finishes her work, if you didn't give it over to the presser to press, you couldn't very well send it to a store and say, "Here is a completed garment."

Q. Is there any operation involved in the manufacture of the dress, any of the operations that you have named, that could be eliminated and still have the same product when you are through?

A. No, not the same product.

Q. Now, there has been reference made during the course of this hearing to the cutting department or the cutting area. It has been variously phrased. Will you state to the Court where the cutters work?

A. Well, it is a room partitioned off in the building, so far as I can figure it out. It is in the south wing of the building, facing west.

Q. And does that partition extend from the floor to the [482] ceiling? A. No, it does not.

Q. About how high is the partition?

A. Oh, I would say seven feet.

Q. Is this area enclosed on all four sides?

A. No, it is not.

Q. Where is it open?

A. Well, there is one section that is open in the

(Testimony of Louis Swartz.)

stock room. The stock room is included in the cutting room.

Q. Now, what is the equipment of the cutting department? What machines or tools or devices do you have there?

A. Well, the only tools they use up at our factory, cutting tools, are either the shears, the short knife or the circular machines.

Q. Do you have tables there? A. Yes.

Q. Do the cutters work on the tables?

A. Yes, they do.

Q. Do the assorters work in this same area?

A. Yes.

Q. How many assorters were there in the cutting department on July 23, 1941, the day before the strike? A. Four.

Q. How many assorters are there now?

A. Four. [483]

Q. Did each of the assorters do substantially the same work that you have explained? A. Yes.

Q. Now, other than the male cutters and the assorters, who else works in the cutting department?

A. Well, we have the female cutters.

Q. Anybody else in that department?

A. The stock room girl.

Q. And what does she do?

A. Well, she takes charge of stock, sees that the stock is kept in order. She brings the material to the cutters that they cut. She takes it away when they are finished with it.

Mr. Shapiro: Now, I asked your Honor if we might adjourn at noon.

(Testimony of Louis Swartz.)

Trial Examiner Erickson: All right. We will adjourn until 1:30.

Mr. Shapiro: Before we adjourn, I would like to make a demand and notice to produce on the record, if I may.

Trial Examiner Erickson: Yes.

Mr. Shapiro: I will ask counsel for the National Labor Relations Board to produce at 1:30 the original of a letter of September 11, 1941, from Lettie Lee, Inc., signed "Sam Bothman," to Mr. D. C. Sargent, care of the National Labor Relations Board, Twenty-First Region, United States Post Office and Court House, Los Angeles, California. I have the [484] copy, if that will help you in identifying it, and I would like to have the copy back.

Mr. Sokol: Before we adjourn also,—are you through, Mr. Shapiro?

Mr. Shapiro: Pardon me?

Mr. Sokol: Are you through?

Mr. Shapiro: No. And I will also ask, and I make the motion on the record, that counsel for the union produce the original of the agreement dated August 8, 1941, between the Dress Association of Los Angeles and the International Ladies' Garment Workers' Union and the Joint Board of the City of Los Angeles, composed of Locals 96, 97, 87 and 65.

Mr. Sokol: You have a copy of it?

Mr. Shapiro: I have a copy. Will you stipulate it is a true copy?

Mr. Sokol: Is it mimeographed or typewritten?

Mr. Shapiro: It is mimeographed. Yes, the sig-

(Testimony of Louis Swartz.)

natures are mimeographed too. Will you stipulate this is a true copy and may be used for all purposes for which the original might be used?

Mr. Sokol: I will examine it. I will bring it with me.

Mr. Shapiro: I don't want you to take it with you.

Mr. Sokol: Right now I ask that I take it during the recess and return it——

Mr. Shapiro: I don't want you to take it with you. [485]

Trial Examiner Erickson: It is not in evidence. He doesn't have to give it to you.

Mr. Sokol: I know he doesn't.

Mr. Shapiro: It is the only copy I have.

Mr. Sokol: Well, obviously——

Mr. Shapiro: We might have extreme difficulty if anything happened to this in giving it to you.

Mr. Sokol: I am certainly trustworthy to that extent.

Mr. Shapiro: You are trustworthy to any extent, but I don't want to part with any part of the evidence until it is offered.

Trial Examiner Erickson: We will recess until 1:30.

Mr. Sokol: Just one moment, your Honor. There is this matter: I made an error in informing your Honor that the agreement which provided for a penalty in the event Lettie Lee, and these other persons who were members of the Southern California Garment Manufacturers As-

(Testimony of Louis Swartz.)

sociation, recognized the union, in that I said the agreement, from what I understood, was not executed. But the Senate Civil Liberties Committee Report, Volume 52, does show that it was executed by seven concerns, but does not name the concerns.

I just wanted to note that I was mistaken, in that it actually, according to the testimony of Mr. Wolfe, Nelson Wolfe, was executed. I intend to put on something with respect to that. I can't locate Mr. Wolfe right now. [486]

Mr. Shapiro: You don't have any information that it was executed by Lettie Lee?

Mr. Sokol: Well, there were only seven or eight members of the organization.

Trial Examiner Erickson: We will recess until 1:30.

(Whereupon, at 12:05 o'clock p. m., the hearing in the above-entitled matter was recessed until 1:30 o'clock p. m.) [487]

Afternoon Session

(Whereupon, at 1:30 o'clock p. m. the hearing was reconvened, pursuant to recess.)

Trial Examiner Erickson: The proceeding will come to order.

Mr. Shapiro: I will call Miss Richard. I mean Mrs. Lamire.

I have asked the Examiner's permission to do this.

Mr. Ryan: That is all right.

DORORTY RICHARD LAMIRE,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Shapiro) Will you state your name, please?

A. Dorothy Richard Lamire, L-a-m-i-r-e.

Q. I can barely hear you.

Mr. Nicoson: I can't hear her either. What was that last?

(The answer was read.)

Q. (By Mr. Shapiro) Richard was your maiden name then, I take it? A. Yes.

Q. Were you ever employed at the factory of Lettie Lee, Inc.?

A. I have been employed since last June. [488]

Q. June of 1941? A. June of 1941.

Q. Do you recall in what part of the month of June of 1941 you went to work there?

A. It was the very beginning of June, in the second week, I think.

Q. In the second week? A. Yes.

Q. Do you know when you received your first check? A. The 13th of June.

Q. And you commenced working——

A. Before that.

Q. ——at the beginning of that week?

A. Yes.

Q. So that would be some time around the 6th of June? A. Yes.

(Testimony of Dorothy Richard Lamire.)

Q. In what capacity were you employed there?

A. As a cutter.

Q. Did you work in the same department with Vito Cimarusti, Angelo Castella, Mort Litwin, Eunice Usher, Joe Sardo, Louis Baliber, Don Quinn, Nolan Berteaux, Kathryn Lembke, Sarah Giochetti, Marie Chavez, Frances Avila, and Saloma Sesma?

A. Yes.

Q. Will you state to the Court just what work you did? What did your particular operations consist of? [489]

A. Well, I was cutting and sloping, mostly.

Q. By the way, before you went to work at Lettie Lee, had you had any schooling or instruction in cutting?

A. Yes, I took 14 weeks of pattern drafting, and I had about 14 weeks of cutting.

Q. 14 weeks of pattern drafting, and 14 weeks of cutting. Where did you receive that instruction?

A. At Frank Wiggins Trade School.

Q. And that is in the city of Los Angeles, is it?

A. Yes.

Q. When did you attend that school?

A. Well, I finished in December, '41—I mean, '39. I went the two years previous.

Mr. Nicoson: I didn't get that last.

The Witness: I went for the two years of 1938 and '39—no, '39 and '40, it was.

Mr. Nicoson: You went to school in 1939 and 1940?

(Testimony of Dorothy Richard Lamire.)

The Witness: Yes, for two years.

Q. (By Mr. Shapiro) In the course of your work at Lettie Lee, did you ever cut out the complete garment or dress?

A. That was just about my first assignment, to cut out single dresses.

Q. Will you describe to the Court just how you performed that operation?

A. Well, you lay your material on the paper the length of [490] your marker. Then you cover it with your marker, which has the pattern drawn on it, and then you just follow your pattern and cut it out.

Q. Did you ever make a marker?

A. Yes, I have.

Q. At Lettie Lee? A. Yes.

Q. Did your work differ in any respect from the work performed by the men cutters whose names I have previously read off?

Mr. Nicoson: I object to that.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro) Did you work at a table? A. Yes, I had my table.

Q. What else did you use?

A. Well, I cut with a scissors mostly.

Q. Will you state to the Court what the men cutters did when they cut out a garment?

A. Well, they cut it out just the same as I did, except they generally cut with the machines.

Q. Did they sometimes cut with scissors?

(Testimony of Dorothy Richard Lamire.)

A. Yes, whenever they have singles or small amounts.

Q. Did you ever cut with a machine?

A. I have cut with a machine; not at Lettie Lee, though.

Q. Now, this sloping operation that you described, will you [491] state to the Court what that is, and how you do it?

A. Well, it is when any dress has been sent out for embroidery work, or pleating, or anything else, and then it is brought back, it has to be cut with a marker like anything else, only I think it is more intricate than cutting.

Mr. Nicoson: I move to strike out what she thinks.

Trial Examiner Erickson: It will be stricken.

Q. (By Mr. Shapiro) In your opinion, does it require a greater amount of skill and ability to slope a garment than it does to cut it?

A. Yes, I think so.

Mr. Nicoson: I object to that. It calls for the opinion of the witness.

Trial Examiner Erickson: She may answer then.

The Witness: I think it does.

Mr. Nicoson: I move to strike that answer on the same grounds, what she thinks.

Trial Examiner Erickson: The motion is denied.

Q. (By Mr. Shapiro) Mrs. Lamire, how long

(Testimony of Dorothy Richard Lamire.)

did you continue working at Lettie Lee after you started in June of 1941?

A. Well, I just quit last week.

Q. You quit last week? A. Yes.

Q. And why did you quit?

A. Because I am going to have a baby in three months and [492] can't work.

Mr. Sokol: I didn't get that. Oh, pardon me.

Mr. Shapiro: That is all.

Cross Examination

Q. (By Mr. Nicoson) When you went to work for Lettie Lee, Kathryn Lembke was not working there then, was she?

A. I believe she was on vacation.

Q. That isn't what I asked you.

A. No, she wasn't.

Q. Now, please answer my questions and don't give me your own ideas. She didn't work there up until October of this year, did she?

A. I really don't know just when it was she came back.

Q. She was gone, at least she wasn't there, for about four months right after you began to work? Is that about right? A. Yes.

Q. As a matter of fact, you were hired to take her place, weren't you? A. Yes.

Q. Now, you say you sometimes cut out a dress, singles, you said. Is there any difference in cutting a single than in cutting out a dress at home, if you had the proper pattern?

(Testimony of Dorothy Richard Lamire.)

A. No, but you have to be skilled to do it, to cut it out properly. [493]

Q. Well, any housewife who knows how to follow a pattern can cut out a dress at home; isn't that right? A. Yes.

Q. And that is the same kind of work that you were doing; isn't that true? A. Yes.

Q. Now, this sloping you spoke of, you don't get that directly from the cutters, do you,—the sloping work?

A. Well, it is a part of the dress.

Q. You don't get it until after it has been cut and sent to some outside concern?

A. It is not cut. It is always sent out in a piece.

Q. It goes out in a big bolt and is sent to the pleaters and tuckers, is it?

A. It goes out in the certain amount that is needed.

Q. It is already cut in squares, isn't it?

A. Yes.

Q. By the cutter? A. Yes.

Q. You don't do that, do you?

Trial Examiner Erickson: Just answer.

The Witness: No.

Q. (By Mr. Jacobson) Then it goes to the outside processor, where it is pleated; is that right?

A. Yes. [494]

Q. Then it comes back to you? A. Yes.

Q. That is when you do your sloping?

(Testimony of Dorothy Richard Lamire.)

Trial Examiner Erickson: What was the last answer?

The Witness: I said "Yes."

Mr. Nicoson: That is all. Thank you.

Cross Examination

Q. (By Mr. Sokol) You mainly cut trimmings before the strike, didn't you?

A. Yes, I was confined to trimmings mostly, and sloping.

Mr. Sokol: That is all.

Mr. Shapiro: Just one or two questions, please. You state that the material——

Mr. Sokol: Just pardon me a moment.

Mr. Shapiro: All right.

Q. (By Mr. Sokol) What were your wages just prior to the strike?

A. I was making \$18.00, over \$18.00 a week.

Q. Approximately \$18.00 a week, would you say? A. Yes.

Q. Sometimes it might be between \$18.00 and \$19.00?

A. It was always over \$18.00. It came to \$18.29 a week.

Q. What is that?

A. It was always over \$18.00. It came to \$18.29 a week.

Mr. Sokol: \$18.29 a week. That is all. [495]

Redirect Examination

Q. (By Mr. Shapiro) When did you say you left Lettie Lee? A. Last week.

(Testimony of Dorothy Richard Lamire.)

Q. Last week. You worked for Lettie Lee for some time while Miss Lembke was working there, didn't you? A. Yes.

Q. When Miss Lembke came back some time in October, you didn't leave at that time, did you?

A. No.

Q. You stated that before the material is sent out to be pleated that it is cut in squares by the cutter, and that you didn't do that cutting. Just what does that consist of, cutting the material before it goes out to the pleaters?

A. It isn't cutting at all. It is just taking out the amount that is required for the length of the skirt, or whatever it is.

Q. You mean it is cut off a bolt, a piece of material off a bolt?

A. It is cutting a piece of material from a bolt.

Q. How is that done,—with a scissors?

A. It is generally just torn.

Q. That doesn't require any skill or ability?

A. No.

Mr. Nicoson: I object to that. [496]

Trial Examiner Erickson: Overruled.

Mr. Nicoson: And move that the answer be stricken.

Trial Examiner Erickson: Let it stand.

Q. (By Mr. Shapiro) After the material comes back from the pleaters, what do you do with it?

A. That is when it is cut in the regular pattern for the dress.

(Testimony of Dorothy Richard Lamire.)

Q. How do you go about that process?

A. It is the same as cutting out a dress. You have to fit your pattern onto the material and mark it out, and then cut it.

Mr. Shapiro: That is all. Thank you.

Recross Examination

Q. (By Mr. Nicoson) Did Kathryn Lembke instruct you in her duties before she left?

A. No.

Q. Were you paid on a piecework basis?

A. No.

Q. How come that some weeks you made \$18.29, and other weeks you only got \$17.93?

A. \$17.93 is after Social Security and everything is deducted.

Q. I beg your pardon?

A. \$17.93 is my salary after my Social Security.

Q. After your deductions? [497]

A. Yes.

Mr. Nicoson: That is all. Thank you.

Trial Examiner Erickson: Do you intend to go back to work at Lettie Lee?

The Witness: No, I can't go back to Lettie Lee.

Q. (By Mr. Shapiro) Why not, Mrs. Lamire?

A. My husband objects.

Q. You mean you are going to have a child?

A. I am going to have a child and stay home and take care of my home and child.

(Testimony of Dorothy Richard Lamire.)

Mr. Shapiro: That is all. Thank you.

(Witness excused.)

Mr. Shapiro: Mr. Swartz.

LOUIS SWARTZ

resumed the stand as a witness on behalf of the respondent, having been previously duly sworn, and testified further as follows:

Direct Examination

(Continued)

Mr. Shapiro: May I have the last question and answer read that I put to Mr. Swartz?

(The record referred to was read.)

Q. (By Mr. Shapiro) You have just heard Mrs. Lamire testify, have you not, Mr. Swartz?

A. I have.

Q. You knew her as Dorothy Richard, when she worked at Lettie Lee? [498]

A. That is correct.

Q. Was the work performed by any of the male cutters any other or different than that performed by Mrs. Lamire? A. No.

Mr. Nicoson: We object to that. It calls for a conclusion of the witness.

Trial Examiner Erickson: Sustained.

Mr. Shapiro: Well, is that on the theory there is already evidence in as to what each of them did, or on the ground it is the witness' conclusion?

(Testimony of Louis Swartz.)

Trial Examiner Erickson: On the grounds that are given in the statement of the objection. Did you hear the objection?

Mr. Shapiro: Yes, I did, your Honor, and I don't want to just burden the record with a repetition of what the men do and what the women do, but if it is solely on the ground it is a conclusion of the witness—

Trial Examiner Erickson: You mean you are making an open comparison by this witness of what has already been testified as to their duties?

Mr. Shapiro: I am not calling him as an expert.

Trial Examiner Erickson: But you are asking him whether the descriptions given as to the work done by the men, that he gave this morning, and the work done by the [499] women are in his opinion the same?

Mr. Shapiro: No, I didn't ask that question. At least, I didn't intend to. I intended to ask him whether or not the work done by the men cutters differed in any respect from the work done by the last witness. I am not concerned—

Trial Examiner Erickson: You mean in the particular duties she has testified she did?

Mr. Shapiro: That is correct.

Trial Examiner Erickson: He may answer that.

Mr. Nicoson: I submit, your Honor, that that is an ultimate fact to be found by the Board, and I also submit that this witness is not qualified and it isn't his province to invade the province of the Board in finding an ultimate fact.

(Testimony of Louis Swartz.)

Trial Examiner Erickson: He may answer as to his opinion.

Mr. Shapiro: Will you read the question, please, so that there will be no argument about what the question is?

(The question referred to was read, as follows:

“Q. Was the work performed by any of the male cutters any other or different than that performed by Mrs. Lamire?”)

A. No.

Q. (By Mr. Shapiro) Now, after the dress is cut in the cutting department and goes to the assorters or bundlers, it then goes to the operating department; is that correct? [500] A. That is right.

Q. Now, will you describe that department? Tell us what it consists of?

A. The actual operating of every little unit that is in it?

Q. Describe it fully, in detail.

A. Well, there are different types of machinery in the operating department. There is the ordinary sewing machine, and there are, oh, five or six special machines that they use in the course of constructing the garment.

Q. Does the operating department consist principally of machines used in sewing the garment?

A. Yes.

Q. Is that the department where the various pieces that have been cut are first assembled?

(Testimony of Louis Swartz.)

A. Yes.

Q. Where is that department located with reference to the cutting room?

A. Right on the other side of the partition.

Q. Do you know how many people are employed in that department?

A. Well, I would make a rough guess of about 60 people.

Q. And they all sew? A. No.

Q. Well, what employees are there other than those that [501] sew in that department?

A. Well, they have the pinker there, the pinking machine.

Q. What is a pinking machine?

A. The pinking machine is a machine that puts a zig-zag line or an edge on a seam after it has been sewn, so that the seam wouldn't ravel.

Q. All right. Who else is in that department?

A. There is the girl that operates the hem-stitching machine.

Q. What does that machine do? What is the function of it?

A. Well, it sews a double row of stitching, leaving a space in the center which, when cut makes a finished edge on both ends of the material, after it has been cut through the center.

Q. All right. In addition to the personnel you have already named, who else is there in the operating department?

A. Then there is the felling machine.

Q. What is that? A. The felling machine.

(Testimony of Louis Swartz.)

Q. The felling? A. Yes.

Q. What is that machine?

A. That is used to turn up the bottoms of dresses, puts [502] an invisible stitch on the wrong side of the garment to hold up the hem.

Q. All right. Are there any other types of machines or kinds of work performed in the operating department, other than what you have just told me about?

A. Yes. There is a snap sewer.

Q. All right. What is a snap sewer?

A. Sews the snaps on.

Q. You mean the snaps that fasten portions of the dress together? A. That is right.

Q. Anything else?

A. A button-hole machine.

Q. Which makes button-holes, I take it?

A. Correct.

Q. Anything else?

A. There is the hemming machine.

Q. And what does that machine do?

A. Makes hems. [503]

Q. All right. Tell us what else there is in that operating department.

A. There is the basting machine.

Q. What does that machine do?

A. Does basting.

Q. What do you mean by basting?

A. They are long single running stitches to hold two pieces of material together until pressed, and then that long running stitch is drawn out.

(Testimony of Louis Swartz.)

Q. All right. Any other types of operators or machines?

A. No, I think that's about all there are up there.

Q. I believe you stated that your recollection was that there were approximately 60 persons in the operating department; is that right? Is your answer "yes"?

A. Yes.

Q. Now, how long does it take the garment to get out of the operating department before it goes into the next step?

A. I don't think anyone can state that, because it depends upon the individual garment, and it also depends on how many times it has to leave the operator and come back to her.

Q. So there is no way you could approximate it?

A. No, I wouldn't attempt to guess at that.

Q. Where does the garment go after it has gone through the operating department?

Q. Well, it leaves the operator once and then comes back [504] to her.

Q. All right. At what stage does it leave the operating department?

A. When they are half finished, I would say, when it goes over to the second draper, to be put on the form and certain required seams that are needed are pinned, according to the way they should be pinned. Then it is returned to the operator to makes those seams.

Q. Now you say it goes to a second draper when

(Testimony of Louis Swartz.)

it is about half finished. Is there a first draper, or anything of that kind? A. Yes.

Q. When does it go to the first draper?

A. It goes to the first draper after it is pressed.

Q. I see. All right. Now, just what is the purpose of sending the garment in a half finished condition to the second draper?

A. Well, that helps the quality of the garment. They don't do it in the cheaper line of work, because they are not very much interested in how well their garment is made up, for price reasons.

Q. Where is the second draper located?

A. Well, it is just at the foot of the operating department.

Q. You mean just adjoining the operating department?

A. Well, it is in the operating department,——

[505]

Q. I see.

A. But it is to one end of it.

Q. Where is it with respect to the cutting room?

A. Just on the other side of the partition.

Q. How many people are employed as second drapers?

A. Well, I believe there is two there now.

Q. Does that number vary from time to time?

A. Yes, it does.

Q. What is the largest number of second drapers that you employ?

A. Well, it is hard to state that, because at times if the second drapers have more work than the girls

(Testimony of Louis Swartz.)

can handle, it is only normal that the first drapers have less work, because the operation has been held up in that effort, and they take some of the first drapers and put them down to help the second drapers until they relieve the congestion.

Q. All right. After the garment leaves the second draper, it is returned to the operators; is that right? A. Right.

Q. And goes through the rest of the operating process? A. Correct.

Q. What is the last operation that is performed by the operators before the garment goes to the next department?

A. That depends on the individual garment.

Q. All right. Will you explain what you mean by that? [506]

A. Well, that will require a mechanic that sits at the machine to explain that. I haven't—as much as I have been in the factory, I have never seen two girls work the same. One girl will finish with one seam first and another girl will finish off with another one. One girl might set her sleeves before she sets the skirt on, and another girl might set the skirt on first.

Q. Is this a correct statement: When the garment is completely assembled in the rough, it is ready to leave the operating department?

A. Yes.

Q. Then where does it go?

A. Well, then it goes over to the pinker.

(Testimony of Louis Swartz.)

Q. All right. Now, is there one pinker or more than one pinker?

A. Well, there are two machines there, and two available girls. One girl usually sits at the pinking machine continually, and if she gets—if it gets congested there, another girl will sit down at the other machine to help her out until she is caught up.

Q. And where are these pinking machines located with respect to the operating department?

A. Right in the operating department

Q. Right in it?

A. They are on the same shaft as the sewing machines. [507]

Q. And where with respect to the cutting room?

A. On the other side of the partition.

Q. Will you state to the Court what operations the garment goes through in the pinking process?

A. Well, the girl would take the exposed seams, and lay them flat on her machine, and there is no thread involved in the machine. It is just a zigzag knife that cuts a zigzag line at the edge of the seam to prevent raveling.

Q. After the pinking machine, what is the next step in the progress of the garment?

A. It goes to the hemming machine.

Q. Where are they located?

A. In the operating room.

Q. All in the operating room?

A. All these machines are located in the operating room.

Q. I see. Do they all operate on the same shaft?

(Testimony of Louis Swartz.)

A. There are a few special machines that are on an individual motor stand.

Mr. Shapiro: May I have the second question from the last one read, please?

(The record referred to was read.)

Q. (By Mr. Shapiro) How many hemming machines are there? A. One.

Q. All right. What happens to the dress after it goes to the hemming machine? [508]

A. The bottom is put upon it.

Q. On the hemming machine? A. Yes.

Q. Then after the bottom is put upon it, what next?

A. Then it goes to the presser.

Q. To the presser. Now, is that in the operating department?

A. Yes, the pressing department is right in the same—it is all one large room after that.

Q. I see. Now, where are the pressing machines located with respect to the rest of the operating department?

A. At the head of the operating machines.

Q. Where with respect to the cutting room?

A. On the other side of the partition.

Q. How many pressing machines are there?

A. Well, they are not machines. They are pressing irons.

Q. Well, how many irons are there?

A. In the factory, or in use in the factory?

Q. In use?

(Testimony of Louis Swartz.)

A. Well, there are four irons used at the factory for the stock production, and there is three irons at the further end of the factory in the designing room, used for samples.

Q. How many pressers are employed?

A. Four.

Q. I take it that the function of the presser is merely to [509] press the garment; is that correct?

A. That's correct.

Q. After the garment is pressed, where does it go?

A. Well, then it will go to the second finisher.

Q. To the second finisher? A. Yes.

Q. What does he do or she do?

A. Well, on 90 per cent of the garments there is some hand work that has to be done on the garment, which you can not possibly do on the operating machine because of the need of invisible stitches. For example, if there is a facing on a dress, and you have to fasten that facing down, the second finisher does that.

Q. How many second finishers are there?

A. I never took the trouble to count, but I believe the second finishing table can seat ten girls, and as far as I have noticed, it has always been full.

Q. All right. After the second finisher complete their work on the garment, where does it go next?

A. Then it goes to the first draper.

(Testimony of Louis Swartz.)

Q. Will you describe to the Court where the first drapers are and what they do?

A. Well, they are in the operating room, at the head of it. They put every garment on the form, put the necessary pads in it, pin them on, pin any buttons or flowers on that are [510] needed on the dress.

Q. How many first finishers are there?

A. I believe there is three.

Q. They are also in this same large room, are they?

A. The same room, yes.

Q. All right. After the first finishers have completed their work, where does the garment then go?

A. Well, you jumped me one move. We were at the first draper. Then it goes to the first finisher.

Q. All right. So that—

A. From the first draper.

Q. So that we are straight on the record, when it leaves the first draper where does it go?

A. To the first finisher.

Q. How many first finishers are there?

A. Again, it is a case of a table. I think that table will seat only eight, and I imagine there are six working there. I wouldn't state definitely.

Q. What does the first finisher do?

A. Sew in the pads and sew on the buttons that have been pinned on by the first draper.

Q. In other words, the first drapers pin on the buttons and flowers, and the first finishers fasten them on the garment?

A. Yes.

(Testimony of Louis Swartz.)

Q. What happens after the first finishers are through? [511] A. It goes to the examiner.

Q. Is there one examiner or more than one examiner? A. Just one.

Q. Is he also in this room? A. Yes.

Q. What does he do with respect to the garment?

A. Well, her first duty is to remove any spot that might have gotten on the garment in the course of the operation, and to generally inspect the dress to see that there hasn't been anything done wrong, and check it in as a finished garment.

Q. After the garment passes the examiner's inspection, what happens then?

A. It goes out into the shipping room to be prepared for shipment.

Q. Then it is a finished garment after the examiner checks it and O.K.s it? Is that correct?

A. That's correct.

Q. Now, there has been some testimony, Mr. Swartz, that a part of the plant is located on the seventh floor. Is that correct?

A. That's correct.

Q. The main portion of the plant, I believe, is on the 12th floor? Is that correct?

A. That's correct. [512]

Q. What departments or machines are located on the seventh floor?

A. There is a complete manufacturing unit down there operating entirely individually, for the complete manufacturing of the garment, all but the cutting and the assorting.

(Testimony of Louis Swartz.)

Q. What is the reason that there is a portion of the plant on the seventh floor?

A. Well, we only put it in there, I would say, about two years ago. The amount of business called for more help, and more help called for more machinery, and not having the required space upstairs, we got a loft downstairs and put up another individual factory.

Q. In other words, it is merely a matter of not having enough floor space on the 12th floor, so that part of the factory unit and machines are on the 7th floor; is that right? A. That's right.

Q. But you have the same operating machines and the same construction?

A. There is a duplicate downstairs of every machine that is upstairs.

Q. You have only the one cutting room, however? A. That is correct.

Q. And that is on the 12th floor? [513]

A. That's correct.

Q. And all the cutting is done there?

A. Yes, sir.

Q. All right. Now, with respect to your own services in the cutting room, just what do they consist of, Mr. Swartz?

A. Well, my first duty is to see that all patterns are graded and up to date. Every other duty I perform I have to do according to my judgment. If, for example, the marker has more than he can handle, I go over and help him mark. Or if the cutters have more orders than they can handle in

(Testimony of Louis Swartz.)

the required time, I will go over and cut. If the sloper will have more than she can do, I will go over and help her.

Q. Is there any part of the work in the cutting department that you do not do yourself personally? A. No.

Q. And you divide your time and you select the work in accordance with—

A. As it is needed.

Q. —what is necessary to be done and the help available? Is that correct? A. That's right.

Q. Now, are you in charge of the distribution of the work to the various workers in the cutting department? A. Yes.

Q. Will you state to the court how you determine upon who [514] shall be one particular type of work, and how the work is distributed?

A. Well, the only way I can determine it is when someone is first put to work I will just let them do everything. I will give them the cutting ticket and probably have them make their own marker, cut the garment themselves, slope it, if there is any sloping necessary, cut their own trims, do everything.

After they have done that for a while, if I see that they can more or less do better one particular thing, for the sake of production I will have that person do that one thing as long as it is required. Then in the event one department is held up, I will just switch them right back.

Q. Are the employees of the cutting department, in so far as the work they do, are they interchange-

(Testimony of Louis Swartz.)

able? A. Oh, every one of them is.

Q. You mean by that you will shift one man or woman from one job to another job, depending upon what work is to be done.

A. Yes. Not I could. I have and I do do it.

Q. Now, do you have anything to do with the hiring of employees in your department?

A. Well, ordinarily the practice has been if someone would come out, sometimes they will come in and ask for me. Sometimes they will ask for Mr. Bothman. If they will ask for me, [515] I will interview them, and if I think they are desirable, I will walk in and say to Mr. Bothman, "There is someone here applying for a job. I think they are all right."

He will go out and interview them, and if his opinion agrees with mine, he will suggest I put them to work.

Q. As to their qualifications or ability for the particular work, do you pass upon that?

A. Well, the only way I could pass upon that is after they have worked there a while.

Q. Do you have the power to hire any employees independent of anyone else in the factory?

A. No. I interview them and I might recommend to Mr. Bothman that he put them on.

Q. What is the situation with respect to discharging employees? Do you have that right?

A. Well, I don't know. I have never tried that right.

Q. You have never fired anyone?

(Testimony of Louis Swartz.)

A. I have never fired anyone, so I don't know if I have that right or not.

Q. All right. Now, what experience have you had in the dress manufacturing industry, Mr. Swartz?

A. Well, for the past six and a half years I have worked for Lettie Lee. Prior to that I had a factory in New York, doing contracting there of my own. I believe I had that place for four years. And prior to that I worked for my [516] father.

Q. In what capacity?

A. Well, I started with my father as an errand boy and learning how to cut at the same time.

Q. So how many years experience have you had in the industry? A. Sixteen.

Q. Now, calling your attention to the month of June in 1941, did you have any conversation with any of the men cutters with respect to an increase in wages?

A. Well, only to the point that Joe Sardo came over and told me, "With the cost of living going up, the boys have all gotten together and they feel they should have an increase."

Q. He told you that? A. Yes.

Q. Did he initiate the discussion or bring up the subject? A. Yes.

Q. About when was that, can you remember?

A. Well, it was in the morning of the day, but I can't remember the date.

Q. Was that prior to the time that there was a meeting of the cutters in the cutting room?

(Testimony of Louis Swartz.)

A. Well, that was the same day; the morning of that evening.

Q. I see. Then what did you say to Mr. Sardo?

A. I told him I would speak to Mr. Bothman. [517]

Q. Did you speak to Mr. Bothman?

A. I went into Mr. Bothman immediately, and told him what was told me, and he suggested to have the boys wait after work and he will come out and talk to them.

Q. Did you so advise Mr. Sardo?

A. I did.

Q. Then was there a meeting in the cutting room on that day, June 11th? A. There was.

Q. At about 4:30? A. That's right.

Q. Will you state who was there?

A. You want them by names?

Q. Well, if you can remember their names.

A. Well, there was Vito, Don, Angelo, Nolan—I think I left one out—and Louis, and Mort Litwin, and myself.

Q. Was Mr. Bothman there?

A. He came out after 4:30.

Q. All right. Will you state the substance of the conversation at that time, as best you can remember it?

A. Well, Mr. Bothman come in, and the first thing he said was "Lou told me you boys wanted a raise." And I believe it was Joe Sardo spoke up and said, "Yes, with the cost of living going up

(Testimony of Louis Swartz.)

the way it has been, I think we should have one." [518]

And Mr. Bothman said, "I am not going to argue with you or dicker with you. I will just offer you two alternatives. I don't want your answer immediately. Think it over for"—I believe this was on a Thursday, or a Wednesday—he said, "Think it over for the rest of the week, and then let me know what you have decided."

He said, "First, I will either give you a 15 cent an hour increase in wages, or if you stay on at the same wages that you are, when it gets busy I won't put on an extra man, but will give the you boys overtime at time and a half." He says, "But if you take the increase in wages, when it gets busy I can't give you the time and a half overtime. I will have to put on an extra man to take care of the overflow of business."

Q. All right. What did anybody else say, if they said anything?

A. Well, I think it was more or less of a chorus, said, "Well, that's fair enough."

Q. What happened? Any further conversation?

A. No, the meeting broke up that evening.

Q. Now, at any time during the course of that meeting, did Mr. Bothman say, "How many of you men belong to the union"?

A. No, not at that meeting, the first meeting.

Q. At that meeting did he say that, "the union is nothing but a bunch of shysters and they are not out to help you"? [519]

(Testimony of Louis Swartz.)

A. Not to my knowledge.

Q. Did Mr. Bothman say that, "The union officials are only out to help themselves," and that they would put in more cutters and that the present employees wouldn't get as much work if they joined the union as they were then getting?

A. I was right there with them, but I didn't hear it.

Q. Did Mr. Bothman say he would close the shop before he would operate under the union?

A. No, he didn't.

Q. Was there any mention or discussion of the union at that time? A. Not at that meeting.

Q. All right. When was the next time, Mr. Swartz?

A. I believe it was on the following Friday, Joe Sardo said, "Well, we have decided we want the increase in wages."

I said, "All right. I will go in and tell Mr. Bothman." And I went in and told Mr. Bothman.

He said, "Well, have them wait after 4:30." And at 4:30 he came out, and when I went in and told Mr. Bothman, I told him they had decided on the increase in wages, and when he came out the first thing he said——

Q. Just a minute before we get into the conversation. Was this meeting also in the cutting room?

A. Yes.

Q. Were the same individuals present as were present in the [520] first meeting? A. Yes.

(Testimony of Louis Swartz.)

Q. All right. Now, will you state what Mr. Bothman said, and what the others said?

A. He said, "Well, I hear you decided on the increase in wages. There is nothing more I can say about it. You have your increase in wages now."

He says, "One other thing. How many of you boys belong to the union?" And although they didn't answer individually, they all shook their heads "no", and it was just taken for granted that it meant "no."

Q. Was that before or after Mr. Bothman said that he would give them the increase?

A. That was after.

Q. Previous to making that statement, did he say what the increase would be?

A. Well, he told them at the first meeting it would be 15 cents an hour.

Q. I see. Was there any other conversation at that meeting? A. Not that I recollect.

Q. You were there throughout the entire time,— A. Yes.

Q. —weren't you? A. Yes.

Q. Can you recall any other conversation at all in that [521] second meeting, other than what you have told us about?

Mr. Nicoson: He said he didn't. I object, and repetitious.

Mr. Shapiro: All right. I will withdraw it.

Q. (By Mr. Shapiro) Now, have you ever been asked to join the Cutters Local?

A. Yes, I have.

(Testimony of Louis Swartz.)

Q. Did you join it? A. No.

Q. There was a strike, I believe, only July 24th at the plant; is that correct? A. There was.

Q. When was the first time that you knew that there was a strike?

A. The morning, as I came down to work.

Q. How did you know that?

A. Saw the picket line there.

Q. And what did you do when you saw the picket line?

A. Well, I heard all the cutters were around the corner. I went around the corner there, and I think the first one I met was Joe Sardo, and I asked Joe if he was going up to work. He said, no, he is afraid to go up to work. He said, "All the cutters are in the restaurant there."

I said, "Well, if you are afraid to go up to work, if you want to go to work, get in my car and I will take you up." [522]

He said, "No. They all decided they are not going up to work."

Q. Did he say who "they" were?

A. Well, he didn't say. At one time he mentioned all the cutters were in the restaurant.

Q. Now, when you said that you offered to take him up to work in your car, will you explain that?

A. Well, our building has a garage in the basement, a parking garage, and you drive in there and park the car there, and go up in the elevator.

(Testimony of Louis Swartz.)

Q. Well, what did you do after he said they weren't going to work?

A. I went upstairs and waited for Mr. Bothman to come in.

Q. Now, had Mr. Bothman told you to ask these boys to come back to work?

A. No, he hadn't.

Q. How did you happen to ask them?

A. Well, it seemed only a normal question, because, oh, about a week before there were rumors going around——

Mr. Sokol: Just a minute. I object to the form of the question, as calling for the conclusion of the witness.

Trial Examiner Erickson: Read the question, please.

(The question was read.)

Q. (By Mr. Shapiro) (Continuing) ——to go back to work?

Trial Examiner Erickson: Yes, he may answer. [523]

The Witness: A week before, there were rumors going around that there would be a strike called. Just when, no one seemed to know, and I went around to each boy individually, while they were working in the place, and suggested to them that if they ever come to work in the morning and find the picket line there, if they want to come up to work, not to try to force through the picket line, not to get into any fights, go back into their cars and drive into the garage and come upstairs.

(Testimony of Louis Swartz.)

Q. (By Mr. Shapiro) What did the boys say when you told them that?

A. They just said, "Yes," and it went at that.

Q. Did Mr. Bothman tell you to talk to the boys—

A. No, he didn't.

Q. —along that line? A. No.

Q. Did he know that you had addressed the boys?

A. No. The only thing he knew, after the first morning of the strike I told him that I had told the boys to do that, and then I saw them all in the restaurant.

Q. And what did Mr. Bothman say?

A. He says he can't understand it. He can't understand why they didn't come up to work.

Q. By the way, do you know whether or not there have been pickets in front of the 719 building in which the Lettie Lee [524] plant is located any part of this week?

A. No, I can't honestly say.

Q. You don't know?

A. No, I never use the front door.

Mr. Shapiro: Will you stipulate, Mr. Sokol, that there have not been any pickets any part of this week?

Mr. Sokol: I don't know.

Mr. Nicoson: I will object to it, even if he will stipulate to it. I don't see any materiality whether they have pickets down there or not.

Mr. Sokol: I don't know.

Mr. Shapiro: I think that is the fact.

(Testimony of Louis Swartz.)

Mr. Sokol: That they have pickets?

Mr. Shapiro: That they have no pickets.

Mr. Sokol: Have it your way. Let me see. Pardon me just a moment.

(A short interruption.)

Mr. Sokol: I will stipulate to that, if you know that as a fact. I will accept your stipulation.

Mr. Shapiro: Well, when I say I know it as a fact, I mean simply this, that I have been in the vicinity of that building every day this week, and I have seen no pickets, and I understand from others that there have been no pickets there at all.

Mr. Sokol: I accept the stipulation. Is that a stipula- [525] tion?

Mr. Shapiro: That is a stipulation.

Mr. Sokol: Accepted.

Mr. Shapiro: Thank you.

Mr. Sokol: Does the Board accept it?

Mr. Nicoson: I don't accept it, but I don't offer any objection.

Q. (By Mr. Shapiro) Now, Mr. Swartz, after the strike was called on July 24th, did you thereafter talk to any of the boys who had gone out on strike? A. Yes, I did.

Q. Which ones did you talk to?

A. Don Quinn and Vito.

Q. Any of the others? A. No.

Q. Whom did you talk to first?

A. To Don Quinn.

Q. Will you state when you talked to him?

(Testimony of Louis Swartz.)

A. Out at my house on a Sunday morning.

Q. Had you talked to him at all previously?

A. No, I hadn't.

Q. How did he happen to come to your house?

A. I sent a message to him to have him call me up. He called me up and I asked him if he would come out to my house to see me, I wanted to talk to him. [526]

Q. And he came out? A. Yes, he did.

Q. Did you talk to him? A. I did.

Q. Did you tell Mr. Bothman that you were going to ask Mr. Quinn to come out to your house to talk to him? A. No, I hadn't.

Q. Did Mr. Bothman have any idea that you had done that? A. No.

Q. Why did you ask Mr. Quinn to come out to your house?

A. Well, I wanted to offer him an opportunity to come back to work.

Q. Did you have a conversation with him?

A. Yes, I did.

Q. Will you state the conversation?

Mr. Nicoson: Let's fix the time, please.

The Witness: Well, I was——

Mr. Nicoson: Wait a minute. I don't want to make an objection unless it is necessary, but I will make an objection unless he fixes the time on it.

Mr. Shapiro: I think he testified as to the time.

Q. (By Mr. Shapiro) Tell us when it was.

A. It was approximately a month after the

(Testimony of Louis Swartz.)

strike began, on a Sunday morning, about 10:30 in the morning? Right?

11:30. Mr. Quinn corrects me. It was 11:30. [527]

Q. Was anyone there besides you and Mr. Quinn? A. No, there wasn't.

Q. All right. Will you state the conversation, please?

A. Well, we spoke of quite a number of things. We opened the conversation with bowling.

Q. With what?

A. With bowling. I asked him if he was doing any bowling, like that. And he asked me. And we both decided we hadn't. And, oh, we spoke of a number of things before we actually got to talking of why I had him come out. Then I asked him what he thought about coming back to work, and he just wasn't sure. He said—

Mr. Nicoson: I object to that.

Q. (By Mr. Shapiro) Just tell us what he said, rather than your conclusion.

A. He says, "Well, I don't know what to tell you."

I says, "Well, do you want to come back to work, or don't you?"

He says, "Well, if one of the other boys would come back to work, I would go back with him."

I said, "Is that your strongest objection?"

He said, "Well, it isn't an objection," it is only that he is more or less afraid to go back to work, and if one of the other boys would go back with him, he would have felt better about it. [528]

(Testimony of Louis Swartz.)

So I says, "Well, the only thing I can do then is to offer you"—I told him that I thought quite a bit of him, not only in business, I had seen him quite often personally out of the place. I told him I thought quite a bit of him, and also Vito, and I told him if he felt that way, to get in touch with Vito, and if Vito wanted to, he could come back to work also. And I told him to call me the following day and let me know his decision one way or the other.

The following day he called and said they decided not to come back to work.

Q. Did you ever have any other conversations with Mr. Quinn?

A. No, that was the end of that.

Q. Prior to sending the message to Mr. Quinn and prior to talking to him, had Mr. Bothman asked you to contact any of the boys or talk to them?

A. No, he hadn't.

Q. Had any other officer or representative of Lettie Lee, Inc., asked you to do that?

A. No.

Q. After talking to Mr. Quinn, did you at any time tell Mr. Bothman what you had done?

A. Yes, after the following day I told Mr. Bothman what I had done.

Q. What did Mr. Bothman say? [528]

A. Well, he asked me why I did it. And I said that regardless of what he thinks, I still think that Don Quinn was just swayed by the mob, and that if he was sorry, that he would come back to work.

(Testimony of Louis Swartz.)

I thought personally that he did want to go back to work, but he was just afraid.

Q. What did Mr. Bothman say?

Mr. Sokol: I move to strike what he thought personally.

Trial Examiner Erickson: That wasn't a part of the conversation, was it?

The Witness: Well, out to my house he told me he was afraid to come back to work.

Trial Examiner Erickson: I mean that last statement you made wasn't in your conversation?

The Witness: No, that wasn't in the conversation.

Trial Examiner Erickson: It will be stricken.

Q. (By Mr. Shapiro) What did Mr. Bothman say after you had told him that you had talked to Mr. Quinn?

A. Well, he told me I shouldn't have done it.

Q. All right. Now, you said something about having had a conversation with Vito. Is that right?

A. That's right.

Q. When did you have that conversation?

A. Well, I can't replace it exactly. It was approximately two to three weeks after the conversation with Mr. Quinn, I called Vito. [530]

Q. Was that a telephone call? A. Yes.

Q. Did he call you or did you call him?

A. No, I called him.

Q. What did you state to Mr. Cimarusti?

A. First I asked him—well, I asked him how his wife was getting along. I heard she was sick. Then

(Testimony of Louis Swartz.)

I asked him if Don had approached him and told him what I spoke to Don about, and he said he had. And I asked him what his opinion was in the matter. And he said, well, he felt the same way about it as Don. He said they decided to take that step and they felt once they took that step, that they shouldn't try to retract.

Q. Was there anything else said?

A. And I asked him, well, would he want to come back to work?

And he said, "No," he don't think he can.

Q. Was that all the conversation?

A. That's all.

Q. Did you tell Mr. Bothman that you were going to talk to Mr. Cimarusti?

A. No, I didn't tell him at this time, but just when I got through with the call, Mr. Bothman walked over, and he happened to hear the tail end of the conversation. And I told him who I had called, and what I had done. [531]

Q. What did he say?

A. Well, he just didn't say anything. He walked away. I probably would have gotten the same answer as the first time I told him.

Mr. Ryan: I move to strike out what he probably would have done.

Trial Examiner Erickson: That will be stricken.

Q. (By Mr. Shapiro) Now, you never talked to any of the other men that went out, did you?

A. No, I haven't.

(Testimony of Louis Swartz.)

Q. How did you happen to select these two boys to talk to?

A. Well, I have liked them personally.

Q. You had been social acquaintances previous to this time?

A. Well, we all did go bowling at least once a week; not just with those two boys, but, as a matter of fact, all the cutters. And Mr. Quinn was out to my house quite a number of times alone.

Q. And you considered that you were closer to those two boys than to the others?

Mr. Sokol: He didn't say that.

Mr. Nicoson: I object.

The Witness: No, I enjoyed their company.

Trial Examiner Erickson: Sustained.

Mr. Nicoson: I move that the answer be stricken.

Mr. Shapiro: It may go out. [532]

Trial Examiner Erickson: It may be stricken.

Mr. Shapiro: Cross examine.

Cross Examination

By Mr. Nicoson:

Q. Mr. Swartz, have you got your gun on you today? A. No, I haven't.

Q. You had it on you when you were in the hearing room yesterday? A. I did.

Q. You didn't bring it in today?

A. No, sir.

Mr. Shapiro: What was that? I didn't hear those questions.

Mr. Nicoson: Read it to him.

(The record was read.)

(Testimony of Louis Swartz.)

Mr. Shapiro: If the Court please, I am going to move to strike the questions and the answers, and I am going to object to the questions on the ground that they are entirely incompetent, irrelevant and immaterial. Counsel for the Board and Mr. Sokol are trying to make an issue out of something that isn't an issue at all. They well know that this man has a permit to carry a gun.

Mr. Sokol: Let's see the permit.

The Witness: I showed it to you in the hall.

Mr. Nicoson: Wait a minute. I say that I have a right [533] to show what kind of people we are dealing with. This witness has testified that he came to this Federal Building and in this Federal court room with a gun on him. I accosted him in the hall about it and found out he had it, and I told him to get it out of the Federal Building immediately.

Mr. Shapiro: And he did.

Mr. Nicoson: And he did. I asked now if he had it on him today. I want the record to show what kind of people we are dealing with.

Mr. Shapiro: I want your Honor to understand that he had a permit to carry it. I didn't know that he had it, but as soon as I learned about it, I told him to immediately remove it from the building, permit or no permit. And he has no gun today. You may show the permit to anyone that wants to see it, and I will be very happy to have the witness state why he had to get a permit to carry a gun.

(Testimony of Louis Swartz.)

(Thereupon the witness exhibited the permit to counsel.)

Mr. Sokol: That isn't the permit he showed me yesterday.

The Witness: I beg your pardon. It is.

Mr. Sokol: No, it isn't.

The Witness: You are a liar. That is the permit.

Trial Examiner Erickson: Wait a minute. The objection is overruled. Proceed with the examination.

Mr. Sokol: Mr. Examiner, I want the record to show this: I am ready to take oath that yesterday this man showed me a [534] permit with the name on it of R. A. Swartz.

The Witness: Now, wait a minute.

Mr. Sokol: Will you allow me to finish my statement? You have already called me a liar once.

The Witness: I am sorry. I apologize.

Mr. Sokol: The permit carried the initials, "R. A. Swartz." At this time he is showing me a permit bearing the name, "Louis A. Swartz." I made note at the time of the permit bearing the name, "R. A. Swartz."

The Witness: Your Honor, may I hold it up and show it to you?

Trial Examiner Erickson: Proceed with the examination.

The Witness: I had it folded in my folder, and now he sees it open.

Trial Examiner Erickson: Will you please answer questions when you are asked.

(Testimony of Louis Swartz.)

Q. (By Mr. Nicoson): You say you worked six and a half years for Lettie Lee?

A. Yes, sir.

Q. As a matter of fact, Lettie Lee has only been organized for three years; isn't that so?

A. Well, I worked for Lettie Lee, Inc. and Lettie Lee before that, and Lettie Lee, Inc. before that.

Q. When was it you worked for Lettie Lee before that, before all these "before thats"? [535]

A. Well, I heard it was a corporation before it was privately owned.

Q. You don't know that?

A. No, I don't. That is only what I heard yesterday.

Q. Only what you heard yesterday. Then you don't know what it was when you first worked for it?

A. No. All I know is it was Lettie Lee.

Q. So if this corporation wasn't formed until 1939, you haven't worked for this corporation six and a half years, have you?

Mr. Shapiro: I submit that is argumentative.

Trial Examiner Erickson: Proceed now.

Mr. Shapiro: Pardon me?

Trial Examiner Erickson: I said, "Proceed."

Q. (By Mr. Nicoson): I believe you stated on your direct examination that you made no distinction between sloping and other cutting operations?

A. No, I don't.

Q. Well, are they one and the same?

(Testimony of Louis Swartz.)

A. In what way do you mean, are they one and the same?

Q. I am asking you, sir.

A. They are all cutting.

Q. Is sloping the same as other cutting operations? A. No.

Q. Then there is some distinction between them, is there? [536]

A. Well, there is three different kinds of cutting the cutter actually does himself.

Q. Then there are distinctions, aren't there?

A. Definitely.

Q. I believe you also testified that you thought that it takes more ability to slope than it does to cut? A. I think so.

Q. Will you tell us why you pay much less for sloping than you do for cutting then?

Mr. Shapiro: That is objected to as incompetent, irrelevant and immaterial, and calling for a conclusion on the part of the witness. And I submit that the witness has testified he has nothing to do with the hiring of the people, except that he interviews them.

Trial Examiner Erickson: The objection is overruled.

The Witness: Well, I don't set any salaries with them.

Q. (By Mr. Nicoson): That isn't what I asked you.

Mr. Nicoson: Will you please read the question?
(The question was read.)

(Testimony of Louis Swartz.)

The Witness: I don't pay less.

Q. (By Mr. Nicoson): Do you know why the company does?

A. I haven't the slightest idea.

Q. You never had any discussions with anybody about it? A. No.

Q. Do you know whether or not it is your policy or the [537] policy of the company to pay the employees on the basis of the degree of the importance of the work they do?

A. Not that I have known of.

Q. Will you pay a sweeper as much as a cutter?

A. No.

Q. Would you pay a hemmer as much as you do a cutter? A. Would I pay them?

Q. Yes.

A. You mean if I had my own place of business?

Q. That is right.

A. It depends on the person.

Q. Do you know whether or not Lettie Lee pays a hemmer as much as a cutter?

A. I wouldn't know. I don't have anything to do with the finances.

Q. As a matter of fact, Mr. Swartz, you know the cutters are the highest paid employees in the shop? A. In the Lettie Lee?

Q. In the Lettie Lee shop right now, this very minute?

A. I have heard rumors to that effect.

Q. You know it of your own knowledge, don't you? A. Not from payroll records.

(Testimony of Louis Swartz.)

Q. Can you name anyone else in the plant that makes \$45 a week, doing an operator's job, I mean below the rank of a supervisor? Name just one.

[538]

A. A sample maker.

Q. What does he get?

A. I don't know how much she makes, but more than the average.

Q. Do they get more than \$45?

A. I don't know. They are higher priced than the operators.

Q. Can you name a single person below the rank of a supervisor who makes \$45 or above per week right now?

A. Yes, I believe one of the designers makes more than that.

Q. All right. Now, name somebody else. One more.

A. Another designer.

Q. Outside of the designers, now, name somebody.

A. That would be beyond me, beyond any records that I would see.

Q. I am not asking you about the records. I am asking you what you know.

A. I don't know anything about it outside of the cutting room.

Q. As a matter of fact, you don't know whether the designers get \$45.

A. This particular one I know gets more than \$45, because I have been quite friendly with her.

Q. And that is what she told you?

(Testimony of Louis Swartz.)

A. Yes.

Q. As a matter of fact, you haven't looked at the record [539] yourself? A. No.

Q. You only know that by what she told you?

A. That's right.

Q. Now, you say after the cutters have finished with the garment, that it couldn't go direct to the operator. Did I understand you to testify along that line?

A. I said that it could go direct to the operator, but that it would have to come back four or five times for needed things.

Q. Why would it have to come back four or five times?

A. Well, if they didn't come back to find out which was the right side of the material, the side they should sew it up on, they would sew it on the wrong side, and they would have to rip it out and then come back to find out how to sew it in, and then do it all over again.

And if they didn't come back to have the darts stamped in, if they just sewed it up as their minds saw fit, if it didn't fit properly, the piece would have to be ripped out of the dress, and have to go back and be stamped and then go back and be put in.

Q. As a matter of fact, the assorters are for the convenience of speeding up the operators in the sewing room?

A. I wouldn't say the convenience. I would say necessity.

(Testimony of Louis Swartz.)

Q. Necessity. In order to make the thing function properly [540] and speed up the operators, don't you have to go to the work of checking out a waist, a skirt, and whatever it is, and have the assorters put them all together, so that the operator can start sewing the minute she gets it; isn't that it? A. Yes.

Q. That is. Sure. Do you have any jurisdiction over the assorters yourself?

A. Over what?

Q. Over the assorters?

A. Well, as much as I have over the cutters.

Q. Well, you have a head assorter there, don't you?

A. No. They have the girl that does the billing for them for the work that goes out of the house.

Q. That is Sarah Giochetti?

A. You mean now, or before the strike?

Q. Before the strike. A. Yes.

Q. She was generally in charge of the assorters, wasn't she?

A. Well, she would take the bundles as they came off the cutters, and if there was anything to be sent out for pleating or tucking, she would bill it out.

Q. And she would give it to the assorters for the various work? [541] A. Yes.

Q. And for that she got a little more money than the assorters, didn't she? A. Yes.

Q. About four or five dollars a week?

(Testimony of Louis Swartz.)

A. No, I don't think it was that much.

Mr. Sokol: He said not that much.

The Witness: She got more, but I don't think it was that much.

Q. (By Mr. Nicoson): About \$1 more on the week; is that right? A. Yes.

Q. I believe you also stated that the assorters are doing substantially the same thing now that they did prior to July 24th?

A. Oh, definitely.

Q. Definitely. Is Giochetti there now?

A. No, she isn't.

Q. She is not there now. Now, you mentioned something about a stock room girl? A. Yes.

Q. I believe I understood you to testify that she brings the material to the cutters and takes it away from them? A. That's right.

Q. What do you mean when you say she takes the material [542] away from the cutters?

A. When they were all finished with cutting the particular type of material, and didn't need it any longer, she would take it and put it back where it belongs.

Q. She doesn't do any cutting herself?

A. No.

Q. Do you know what her pay is?

A. No, I don't.

Q. Her rate of pay? A. No.

Q. You say you were solicited by the union to join? A. Yes.

Q. But you did not join? A. No.

(Testimony of Louis Swartz.)

Q. Did you go to Mr. Sokol's office around the 14th or 15th of September?

A. No. It was the second day of the strike.

Q. That was July 25th?

A. It was on a Friday.

Q. July 25th was the second day.

A. It was on a Friday, the second day after the strike.

Q. If the second day of the strike was July 25th, that is it? A. That's right.

Q. And you went up there by yourself, didn't you? [543] A. Yes.

Q. Did you know the other cutters were going up there? A. Yes.

Q. Why didn't you go up with them?

A. Because at the time the cutters were at the union hall, and Scotty had asked me to take up a message to Mr. Bothman, and I went up there, and during that time Scotty had sent all the cutters to Mr. Sokol's office, and when I returned to the union, Scotty said, "All the cutters just left for Mr. Sokol's office. Go up there. You will meet them there."

When I got there, they had already left.

Q. You took this message to Mr. Bothman?

A. Yes.

Q. What was it?

A. He told me to tell Mr. Bothman all the cutters have decided not to come back to work.

Q. And Scotty is Harry Scott; is that correct?

(Testimony of Louis Swartz.)

A. I don't know. That is all I know him as. He is an officer of the union.

Q. An officer of the union. And what did Mr. Bothman say about that?

A. Well, he just didn't give me any answer.

Q. Did you then go back to Mr. Scott and report what happened? A. That's right. [544]

Q. What did you tell Mr. Scott?

A. I just told Mr. Scott he wouldn't give me any answer on this message.

Q. And that was July 25th that this occurred,—right? A. Yes.

Q. Then you went up to Mr. Sokol's office?

A. That's right.

Q. For what purpose did you go up there?

A. Well, I don't know.

Q. For what purpose did you go to the union hall?

A. The boys asked me to stay with them to see just what was going to develop.

Q. What boys? A. All the cutters.

Q. Every one of them?

A. The six of them.

Q. By that you mean Sardo,—right?

A. Sardo, Baliber, Castella, Quinn, Cimarusti and Berteaux.

Q. Where were they when they asked you?

A. Well, at the time when I saw Mr. Sardo the first morning of the strike, he asked me if I minded coming up to the union with them. I said, "I am going upstairs first, and I will see."

(Testimony of Louis Swartz.)

Q. You went upstairs and had a conversation with Mr. Bothman, didn't you? [545]

A. No. I waited for Mr. Bothman to come in.

Q. And he come in? A. Yes.

Q. And no conversation?

A. There was a conversation, but not in regard to that.

Q. Didn't even say "Hello"?

A. Oh, yes.

Q. What did you talk about?

A. I just told him the cutters didn't come up to work. He said, "Do you know why?" I said, "No." He said, "Where are they now?" I said, "Down at union headquarters." And he just walked away.

Q. Were you to find out why they didn't come in? A. No.

Q. Are you sure of that?

A. Positive. There was a strike on.

Q. What happened when you got up to Mr. Sokol's office?

A. I went in and told the girl who I was, and she said, "They just left." I said, "Have you any idea where they have gone to?" And she said, "No, I haven't." And I left to see whether or not I could find them.

Q. Did you find them?

A. Not that day. The following day.

Q. Then you went back to the Lettie Lee plant?

A. No, I went home. [546]

(Testimony of Louis Swartz.)

Q. You went home. When did you go back to the Lettie Lee plant?

A. Not until the following Monday morning.

Q. Did you have a conversation with Mr. Bothman at that time?

A. Nothing more than to the extent that I told him I decided not to go ahead and fool around and wait for the boys, but I am going back to work.

Q. And what did he say about that?

A. He said, "Well, go ahead."

Q. Was anything said about how you were going to run the cutting department?

A. No, there wasn't.

Q. Not a word? A. No.

Q. You didn't say anything to him about how you were going to run the cutting department?

A. No, I didn't.

Q. You were the only cutter there; is that right?

A. Mr. Mort Litwin was there, Dolly Richards and Eunice Usher.

Q. Just the four of you? A. Yes.

Q. Now, you do the same type of work down on the 7th floor as you do up on the 12th floor? [547]

A. All except the cutting.

Q. All except the cutting? A. Yes.

Q. Now, I understand you to say that you help mark, when necessary, and you help cut when necessary, and you grade all the patterns yourself?

A. Yes, sir.

Q. That is in case they are rushed?

A. Yes, sir.

(Testimony of Louis Swartz.)

Q. Or you do any other of the jobs there are in the cutting room that are necessary?

A. That's right.

Q. Do you ever go over and assort?

A. Yes, I have done that.

Q. How often do you do that?

A. Very seldom.

Q. Very seldom? A. Yes.

Q. And that is only in case of a rush?

A. That's right.

Q. Do any of the cutters ever go over and assort?

A. No, they don't.

Q. And the assorters don't come over and cut?

A. No, not to the same extent they do.

Q. Well, they don't come over and cut? [548]

A. Well, they might be short a facing, or something, and will cut it out themselves rather than to bother a cutter.

Q. But they don't ordinarily do the work a cutter does? A. No.

Q. Excuse me just a minute, please.

I believe you testified that about a week or so before the strike you made arrangements with the boys to come in through the basement, in the event there was a strike? A. That's right.

Q. And that you had heard a rumor there was going to be a strike? A. That's right.

Q. Where did you hear it?

A. Oh, it was a general rumor. From the boys themselves that spoke about it.

Q. They talked to you about it?

(Testimony of Louis Swartz.)

A. Not directly. It was just general through the industry.

Q. You mean the boys, the six cutters didn't tell you about the strike?

A. They didn't tell me that they are going out on strike.

Q. Did they talk to you about a strike?

A. No, nothing direct.

Q. Well, whom did you talk to about the strike?

A. I didn't talk to anyone in particular about it.

Q. Did you talk to anybody not in particular?

[549]

A. No.

Q. You mean to say that you never talked to a soul about the possibility of a strike?

A. Well, as I stated, I went to them all and told them there is a possibility that there might be a strike.

Q. You told the boys there might be a possibility of a strike?

A. No. As a matter of fact, I think I said to them, "I suppose you have heard that there is going to be a strike called."

Q. Yes. Where did you get your information to talk to them? A. It was just general gossip.

Q. Based on general gossip, you went and asked these boys that question,—right?

A. Well, now I recollect something else, what made me get the gossip more directly. I had a committee out at my house of three of the union

(Testimony of Louis Swartz.)

men and the entire—well, the purpose of the meeting was that they wanted to know in the event that there was a strike, what I would do.

Q. That is right?

A. And during that time they happened to state to me, "I suppose you know there will be a strike soon, because the union agreements will expire." And that is where I heard that there will be a strike.

Q. Were any of the cutters present at your home at that time [550]

A. No, they weren't.

Q. Were there any other employees of Lettie Lee? A. No.

Q. Based upon that, you then made arrangements for these boys to come into the plant by way of the garage in case there would be a strike?

A. That's right.

Q. Now, you testified about having Don Quinn out to your house? A. Yes.

Q. You said you thought that was about a month after the strike? A. That's right.

Q. Are you certain about that?

A. No, I am not positive.

Q. It could have been in October, couldn't it?

A. Let's see. Yes, it could have been in the early part of October.

Q. Mr. Quinn testified that it was in the early part of October.

A. Yes. Well, that is possible.

Q. That is possible. Now, after that, after you

(Testimony of Louis Swartz.)

talked to Mr. Quinn, then you had a conversation with Mr. Bothman about that?

A. No conversation. [551]

Q. Well, you told him?

A. Yes, I told him.

Q. You told him what you had done, and he said you should not do it? A. That's right.

Q. And after he told you you should not do it——

A. He told me I should not have done it.

Q. And after he told you you should not have done it, you went out and called Vito?

A. That's right.

Q. About two weeks later?

A. That's right.

Q. And Mr. Bothman came up and heard that?

A. Yes.

Q. And at that time he didn't tell you you should not have done that, did he? A. No.

Mr. Nicoson: That is all.

Mr. Sokol: May I have a minute, please?

Trial Examiner Erickson: We will recess for five minutes.

(A short recess.)

Trial Examiner Erickson: The proceedings will come to order.

Q. (By Mr. Sokol) Prior to the strike, the workers came [552] to work in the front entrance of the building on Los Angeles Street; is that right?

A. As far as I know, yes.

(Testimony of Louis Swartz.)

Q. And then before the strike you say you personally took the precaution to see that they came in the side entrance down the alley; isn't that right?

A. I told the cutters if they wanted to prevent any trouble, rather than to start any fights outside, any violence, to come in the side door.

Q. In order to save time, you just listen to my questions. You personally made the arrangements?

A. That's right.

Q. Now, whom did you make the arrangements with? A. With these six boys.

Q. No, to get them in the side entrance. You had to make arrangements with the building, didn't you?

A. No, you don't have to. It is a public garage.

Q. But didn't you know you were going to have guards down there? A. No, I didn't.

Q. You have seen guards down there, haven't you, at the side entrance?

A. Not prior to the strike.

Q. At the time of the strike?

A. Yes, I have. [553]

Q. And you knew that arrangements were being made to have the people come in the side entrance? A. No, I didn't.

Q. You just got that idea by yourself?

A. That's right.

Q. Without talking to Mr. Bothman?

A. That's right.

Q. You know that throughout your testimony

(Testimony of Louis Swartz.)

here on the witness stand you stated you did certain things and then later you told Mr. Bothman. That always happened, first you did it and then reported to Bothman? It didn't happen the other way around?

A. At the times I testified it did.

Q. Mr. Bothman himself has testified from the witness stand that on occasion he has asked people who sought employment as to whether or not they belonged to the union. Do you know that?

A. No, I don't. I know he testified that, but I am not there when he interviews people seeking employment.

Q. Well, you said that you and he both passed judgment on some of the people seeking employment?

A. No. I said I interviewed them first, and if I thought I would like to have them in the cutting room, I would go to Mr. Bothman and tell him, "There is someone out there seeking employment," and he would speak to them. [554]

Q. Did you ever talk to Mr. Bothman about any union? A. No.

Q. Never heard a word in the plant from Mr. Bothman concerning a union? A. No.

Q. In all the time you worked there?

A. No, I haven't.

Q. Now, when you hire a cutter, you ask the cutter how many years experience he has had, don't you? A. I don't hire them.

Mr. Shapiro: I will object to the question. It

(Testimony of Louis Swartz.)

assumes a fact not in evidence, that he hires any cutters.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Sokol) When you interview a cutter, do you ask him his experience?

A. Certainly.

Q. And what do you ask him?

A. Well, the very first thing I ask him is his name, his address; phone number if any; how long he has worked in the line; who his previous employers were; how long he has been with them; what type of work he did there. And I write all that down on a paper, and that is what I take in to Mr. Bothman.

Q. Then you do ask him what experience he has had as a cutter? [555]

A. Yes.

Q. You did not intend to go out on strike, did you? Or, did you intend to go out on strike?

A. Well, frankly, my mind wasn't made up, and I told the boys to the same effect.

Q. But you did go out the day of the strike, and you remained away for a few days?

A. For two days.

Q. During that period you went to the union hall, didn't you?

A. That's right.

Q. And spoke to the officials?

A. That's right. I told the union officials the same thing, that I didn't know.

Q. You spoke to me?

A. No, I spoke to Scotty. And he asked me how I stood. I told him, frankly, I hadn't made up my

(Testimony of Louis Swartz.)

mind, I wanted to see which way the land lies before I make up my mind. I told that to Mr. Scott and also to those six boys.

Q. And you didn't tell Mr. Bothman what transpired?
A. No, I hadn't.

Q. Didn't say a word to him?

A. No. He asked me the same thing, whether I am going to work or I am going to stay out. And I told him the same identical thing, "I would like to wait a couple days and see [556] what is what before I make up my mind."

Q. Do you have any stock in the concern?

A. No, I haven't.

Q. How old are you?

A. Twenty-nine.

Mr. Sokol: That is all.

Redirect Examination

Q. (By Mr. Shapiro) Mr. Swartz, prior to the strike did you park your automobile in the garage in this building?

A. Yes, during the rainy seasons.

Q. You didn't start parking it there just because there was a strike in progress, did you?

A. No, I hadn't.

Q. Now, when was this conversation that you testified to on cross examination, with, I think, two or three of the union officials at your home?

A. Oh, I would say it was about a week or two before the strike.

Q. At that time did you know whether or not these six men who went out on strike belonged to the union?

(Testimony of Louis Swartz.)

A. No, I didn't. You mean before the conversation with these men, or after?

Q. Before? A. No, not before.

Q. When did you first find out that they belonged to the [577] union?

A. Well, these three men that were out to the house said, "A few of the boys have already signed cards," but he couldn't tell me their names.

Q. I think it is a correct statement of the evidence in this case that every one of the boys, according to the cards in evidence, signed in the union on July 21, 1941. That is three days before the strike. Did you have this conversation at your house prior to July 21st? A. Yes, I had.

Q. Did any of the boys, these six boys, at that time tell you they had joined the union?

A. No, they hadn't.

Mr. Ryan: Mr. Examiner, there is also testimony in the record that some of these boys stated that they had joined before, but signed up again on that day, on the 21st, so there won't be any confusion about it.

Trial Examiner Erickson: The record will speak.

Q. (By Mr. Shapiro) Now, I think you were asked as to the percentage of sloping on a garment as distinguished from the cutting. Are there ever instances when there is a far greater amount of sloping on a garment than cutting?

A. Yes, there are.

Q. Will you explain that, please?

A. Well, it depends on the style of the garment.

(Testimony of Louis Swartz.)

There is [558] one style in particular I have in mind in this past season. Well, I would say 90 per cent of the garment was tucked. The only thing that had to be cut was two pieces of the skirt, and a few pieces of facing to go around the neck.

Q. Mr. Swartz, do you have your wallet, or do I have it? A. Yes, I have it.

Q. Did you show this license to Mr. Sokol yesterday? A. Yes, I did.

Mr. Sokol: I object to that as immaterial.

Mr. Shapiro: It was brought out on cross examination. I certainly have a right to show our side of it.

Trial Examiner Erickson: Proceed.

Mr. Nicoson: It wasn't brought out on my cross examination or Mr. Sokol's. There was a colloquy among a lot of people around here, in which it was mentioned, but it was not brought out in my cross examination.

Mr. Sokol: This is going into something which I consider immaterial.

Trial Examiner Erickson: He may answer the question.

Q. (By Mr. Shapiro) Did you show it to Mr. Sokol yesterday? A. Yes, I did.

Q. Is this (indicating) the exact position that license was in when you showed it to him yesterday? A. It is.

Q. In your wallet? [559] A. It was.

Q. As it now appears here?

A. That's right.

(Testimony of Louis Swartz.)

Mr. Shapiro: Let the record show that the witness is referring to his wallet in one of the cellophane compartments.

Mr. Nicoson: I object to that, unless it is introduced in evidence.

Trial Examiner Erickson: Overruled. Proceed.

Mr. Shapiro: That the license to carry concealed firearms is in the witness' wallet folded under the cellophane compartment, so that the printed and typed matter is visible. Now, I will ask permission to show it to the Examiner, so that I can then make a statement as to how it appears in that position.

(The wallet was handed to the Trial Examiner for examination.)

Mr. Shapiro: A portion only of the last letter of the first name is visible, and from where I am looking at it, it appears to be about half of the letter "s".

Will your Honor confirm that for the record?

Trial Examiner Erickson: Yes, I saw that.

Mr. Shapiro: Thank you. Now, will you——

The Witness: Do you want me to take it out?

Mr. Shapiro: Will you remove that?

(The witness did as requested.) [560]

Mr. Shapiro: Let the record show that the license is No. 741, and it is issued in the name of Louis A. Swartz, 6226 Drexel Avenue, Los Angeles.

Mr. Nicoson: May I have a continuing objection to all of this?

(Testimony of Louis Swartz.)

Trial Examiner Erickson: You may.

Q. (By Mr. Shapiro) Is this your license?

A. Yes, sir.

Q. And you are Louis A. Swartz?

A. Yes, sir.

Q. This is the license you showed to Mr. Sokol yesterday? A. Yes, sir.

Mr. Shapiro: So that the record will be complete, it was issued in Los Angeles on December 17, 1941, by E. W. Biscailuz, Sheriff, by A. C. Jewell, Under-Sheriff.

Q. (By Mr. Shapiro) Is that your signature on the license? A. That's correct.

Q. Indicating the lower left hand corner?

A. Yes.

Q. Do you have any other license, other than this one, or did you have any other license when you were in the court room yesterday?

A. My driver's license.

Q. I mean a license to carry a gun?

A. No. [561]

Q. Do you have the gun with you today?

A. No, sir.

Q. Why not?

A. I was instructed it was against the law to carry it in a Federal building.

Q. Who told you that? A. Mr. Sokol.

Q. And you took his word for it?

A. Yes, sir.

Mr. Shapiro: That is all.

(Testimony of Louis Swartz.)

Cross Examination

Q. (By Mr. Nicoson) I think you just testified that there was more sloping than cutting; is that right?

A. On some particular garments, there is.

Q. As a general rule, that isn't true though, is it?

A. Well, that depends upon the individual season, according to our lines. Some seasons have passed where only a small percentage of the dress would have any sloping to do on it, at all; as in particular right now. The sloper probably has only about an hour's work a day right now. There are certain lines where you have to have two or three girls to do the sloping because of the styles. That is all problematical.

Q. Now, I think you also testified that you made the arrangements with the six boys to come in the side door?

A. To drive into the garage. [562]

Q. Why didn't you make that with Mr. Litwin?

A. Because he drives in with me every morning.

Q. How did you know he was coming in?

A. Because he lives with me.

Q. Did you tell him in case of a strike that was the thing to do?

A. No.

Q. Now, don't you get a bonus payment?

A. No, I don't.

Q. You do get about \$10 every week more than the other cutters, don't you?

A. I do.

(Testimony of Louis Swartz.)

Mr. Nicoson: That is all.

Trial Examiner Erickson: I have just one more question. Who were the other three cutters besides the six complainants in the case? You said there were ten.

The Witness: With the other girls, Eunice Usher, Dorothy Richard and Kathryn Lembke.

Q. (By Mr. Nicoson) Let me ask you: At the time of the strike Miss Lembke wasn't there, was she? A. No, she wasn't there.

Q. And Dorothy Richard was employed to take her place?

A. She was there. Not to take her place.

Q. Well, in her stead then? A. No. [563]

Q. Well, if Miss Lembke had stayed on, hadn't gone on vacation or leave of absence, you wouldn't have hired Richard, would you?

A. Lembke had left just when the slow season had set in. If she hadn't left, she probably would have had to stay home for periods because there wouldn't be any work for her.

Q. If there wasn't any work for her, why did you hire Richard?

A. I hired Richard, I think it was two months after Lembke left.

Q. Are you sure that the records will show that?

A. I am positive of it.

Q. Well, whatever the record shows is correct?

A. I am positive that the records show that Dorothy Richard was hired a couple of months after Lembke left.

(Testimony of Louis Swartz.)

Q. I show you a book, which has been furnished to me by counsel for the respondent, which has been identified by Mr. Bothman as the payroll, and I direct your attention to a page which is not yet in evidence, but on which appears at the top of the column May 9, 1941, and tracing over from Dorothy Richard, it shows that is the first time that she received pay. A. May 9th?

Q. 1941. A. Yes. [564]

Mr. Shapiro: What was that date, counsel?

Mr. Nicoson: May 9, 1941, which is not two months after Lembke left.

The Witness: What is it? One month?

Q. (By Mr. Nicoson) It is no month at all. She testified she left at the end of May.

A. When is Lembke's last day?

Q. At the end of May.

A. I mean as the records show?

Mr. Nicoson: I would say that would be May 9th, wouldn't you? The second line date and bring that over?

The Witness: Where is the last line?

Mr. Shapiro: Well, that is the last entry on this page.

Mr. Nicoson: This page comes like this, you see (indicating) for the continuation, as I understand it.

Then it comes up here.

Q. (By Mr. Nicoson) Now, as to Miss Lembke, it is May 30th, am I right about that? And that is the last pay she got?

(Testimony of Louis Swartz.)

A. May 30th. And the other one came on——

Q. On May 9th.

Mr. Shapiro: So that the reverse, apparently, is true.

Mr. Nicoson: Never mind. Let's let the witness testify. He testified she came on two months after Lembke left.

Mr. Shapiro: May I ask a question on voir dire? I don't [565] think the witness knows anything about these books.

The Witness: I don't. I am just in charge of these cutters.

Mr. Nicoson: He said the record would bear him out, and the record doesn't.

Trial Examiner Erickson: Proceed.

Mr. Nicoson: That is all.

Redirect Examination

Q. (By Mr. Shapiro) Are you familiar with this payroll book?

A. Never seen it before, until just now.

Q. Do you know, of your own independent knowledge, when Miss Lembke left on her leave?

A. Not exactly.

Q. Do you know, of your own independent knowledge, when Miss Richard came to work?

A. Not exactly.

Q. When you said that you thought Miss Richard came two months after Miss Lembke went on her leave, what is that,—your best recollection?

A. It was to my own recollection.

(Testimony of Louis Swartz.)

Q. And you didn't check that with the records?

A. No, not at all. If I had, I wouldn't have made that statement.

Q. You don't keep the books, do you? [566]

A. No, never go near them.

Q. You said that there were ten cutters. Was that your testimony?

A. At the time of the strike there were ten cutters working.

Q. Did that include you? A. Yes.

Q. That did not include, however, Miss Lembke, who was on leave? A. No.

Q. Did that include David Thain? A. No.

Q. Do you know when David Thain left Lettie Lee?

A. Well, only from his testimony this morning.

Q. Do you know when he returned?

A. He returned in December; either the end of November, or the early part of December, of last year.

Q. So that if Miss Lembke and David Thain are included in the cutters, not those there at the time, but in the cutters— A. Yes.

Q. —there would be 12 instead of 10?

A. Yes.

Mr. Nicoson: I object to that.

Trial Examiner Erickson: Sustained.

Mr. Shapiro: Nothing further.

Mr. Nicoson: That is all. [567]

Trial Examiner Erickson: Step down.

(Witness excused.)

Mr. Shapiro: Will you take the stand, Mr. Bothman?

SAM BOTHMAN,

called as a witness on behalf of the respondent, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Shapiro) I hand you the payroll records of Lettie Lee, Inc., which you produced here. Will you turn to these records and state from the records when Miss Lembke left on her leave of absence?

Mr. Nicoson: I object to the term "leave of absence."

Trial Examiner Erickson: All right. Reframe the question.

Mr. Shapiro: When Miss Lembke left? Strike out "leave of absence."

It is for the Court to determine why she left, and what the nature of the leave was.

Trial Examiner Erickson: Isn't that already in the record, Mr. Shapiro?

Mr. Shapiro: No, I don't think that sheet was put in.

Mr. Nicoson: No, that wasn't introduced.

The Witness: This must be the date right here, June 6, 1941. You see, here (indicating) is Kathryn Lembke, and you [568] follow it clear to here, and this is the week of June the 6th.

(Testimony of Sam Bothman.)

Q. (By Mr. Shapiro) Now, is it the week of June the 6th, or is it the week of May 30th?

A. The ending of the week of May 30th. We will put it that way.

Q. She was paid to and including May 30th; is that right? A. That's right.

Q. So that she left on May 30th?

A. That's right.

Mr. Shapiro: Now, I will offer in evidence at this time as Respondent's Exhibit 2, this sheet of the payroll record.

Trial Examiner Erickson: What is the purpose of the offer?

Mr. Shapiro: To show when Miss Lembke left.

Trial Examiner Erickson: Is there any dispute about it?

Mr. Nicoson: No dispute about it.

Mr. Shapiro: Then can we stipulate?

Mr. Nicoson: I will stipulate that the record shows that the last pay she received was in the week ending May 30th, according to the payroll.

Trial Examiner Erickson: 1941?

Mr. Nicoson: 1941.

Mr. Shapiro: 1941.

Q. (By Mr. Shapiro) Now, will you state from this record [569] when Miss Richard first came to work?

A. May 9, 1941.

Mr. Shapiro: Will you stipulate, counsel, that the record so shows?

Mr. Nicoson: I do.

(Testimony of Sam Bothman.)

Mr. Shapiro: Will you also stipulate that the same sheet of the payroll, to which we have been referring, shows Dorothy Richard under the subdivision "cutters"?

Mr. Nicoson: Yes, I so stipulate.

Q. (By Mr. Shapiro) Will you turn to the page in this book, which I believe you identified either yesterday or today, showing when Mr. Thain left?

A. The week ending January 17, 1941.

Mr. Shapiro: Will you stipulate, counsel, that the sheet of the payroll records to which the witness has just referred shows that David Thain received pay for the week ending January 17, 1941, and that thereafter there is a considerable interval of time during which he received no pay?

Mr. Nicoson: I will.

Q. (By Mr. Shapiro) Now, will you turn to the sheet in that payroll record showing when Mr. David Thain returned to work?

Mr. Shapiro: Before answering that question: Will you also stipulate, counsel, that this same sheet, to which [570] I last referred, shows Mr. David Thain as one of the employees under the subdivision "Cutters"?

Mr. Nicoson: That is right.

Mr. Ryan: We don't, however, agree that that designation on the payroll indicates that he is a cutter, or that any employee was.

Trial Examiner Erickson: I don't think the stipulation carries that with it.

(Testimony of Sam Bothman.)

Mr. Shapiro: I didn't intend it. I am only asking for a stipulation as to what the record shows.

Trial Examiner Erickson: All right.

The Witness: Let me see. You have got December 5th here, but it doesn't designate whether this week is December 5th (indicating), or this week is December 5th (indicating).

Q. (By Mr. Shapiro) Does the record show that Thain returned to your employment in the month of December, 1941? A. It does.

Mr. Shapiro: Will you so stipulate, counsel?

Mr. Nicoson: I will so stipulate.

Q. (By Mr. Shapiro) Now, can you tell me, Mr. Bothman, how it is that Mr. Thain is included as an employee under the cutters' classification on the sheet of your payroll records which carries him through the week ending January 17, 1941, and then he does not appear under the cutter classification for the period commencing March 28, 1941? [571]

A. Well, he was on a leave of absence at that time. However, it seems to me, the way this book looks, like it is set up here, she set it up quarterly in order to take care of her Social Security; so, therefore, it is carried through from this quarter, and then when she transfers her names, if he wasn't working at that time, probably she omitted it until he did return to work, for the next quarter.

You know, they set it up for Social Security. Now, I am not positive and that could be the fact, and it seems to me, looking at it, why, that could be a reason for that.

(Testimony of Sam Bothman.)

Q. Now, before Mr. Thain left for Texas, did you have a conversation with him?

A. I did.

Q. Where was that conversation?

A. At my desk.

Q. And when was it?

A. Oh, it was a couple days prior to the time he left. I think around—I will have to look at the records to be exactly sure—some time in the neighborhood, around January 17th or 15th, in that period in there.

Q. Will you state what Mr. Thain said to you, and what you said to him?

A. He came to me and told me that he was nervous and feeling badly, and he wanted to go home and be away from the factory for a while, and he would like to go home and be with [572] his folks. His mother has a ranch down in Odessa, Texas, and that he would like to go there.

And I asked him how long did he think he would be gone. And he said he didn't know for sure, because he wasn't feeling very well, he was losing weight and was nervous and he didn't know for sure how long he would be gone.

He asked me at that time if and when he would come back, if his job would be open.

I said, "Dave, naturally, your job is here for you when you come back. You are one of the oldest cutters in the place, and when you come back, why, we will give you back your job."

And he thanked me, and that was all that was

(Testimony of Sam Bothman.)

said during the conversation, that I can recall. He happens to be a brother to Miss Lettie Lee, who is president of Lettie Lee, Inc., and, naturally, we feel very friendly towards each other. And he even asked my advice as to whether or not he should go home and be out in the open for a while.

Q. Now, with reference to Miss Lembke, she has, ever since she has been in your employ, taken two or three or four months off during the summer, has she not?

Mr. Nicoson: Isn't that a little leading?

Trial Examiner Erickson: If it is, are you objecting?

Mr. Nicoson: I do.

Trial Examiner Erickson: Sustained. [573]

Q. (By Mr. Shapiro) When did Miss Lembke leave her work this year, Mr. Bothman?

A. What date?

Q. Well, the month is sufficient.

Mr. Nicoson: Are you trying to impeach him now? You have already proved by the record when she left.

Mr. Shapiro: What is that date?

Mr. Nicoson: That is the pay period ending May 30, 1941.

Mr. Shapiro: The pay period ending May 30, 1941. And, for the record, I am not attempting to impeach him.

Q. (By Mr. Shapiro) Prior to the time Miss Lembke left on May 30, 1941, did you have a conversation with her, Mr. Bothman?

(Testimony of Sam Bothman.)

A. Yes. I don't remember whether it was a week or two before she left, but she asked me if she went away for a couple or three months in the summertime, like she did the previous year, if we would hold her job open for her when she got back. And I said, "Yes."

I don't recall whether it was one, or two, or even three weeks before she left.

Q. But you did have that conversation with her before she left? A. That's right.

Mr. Shapiro: Do you have the original of the document [574] which I asked you to produce this morning, Mr. Nicoson?

Mr. Nicoson: Yes, sir, I do.

Mr. Shapiro: May I have it?

Mr. Nicoson: Let the record show that I produce a letter, addressed to Mr. D. C. Sargent, care National Labor Relations Board, Twenty-First Region, United States Post Office and Court House, Los Angeles, California, on the letterhead of Lettie Lee, Inc., bearing the signature of Sam Bothman, and two attachments.

Q. (By Mr. Shapiro) I will show you a letter on the stationery of the National Labor Relations Board, dated August 13, 1941, and addressed to Lettie Lee, Inc., attention Mr. Sam Bothman, signed, "D. C. Sargent, Field Examiner," and I will ask you if you received that on or about the date it bears?

(Handing document to witness.)

A. I did.

(Testimony of Sam Bothman.)

Mr. Shapiro: I will offer the letter in evidence as Respondent's Exhibit next in order.

Mr. Nicoson: May I see it, please?

Mr. Shapiro: Certainly.

(The document referred to was handed to counsel.)

Mr. Nicoson: Do you now offer it?

Mr. Shapiro: I now offer the letter.

Mr. Nicoson: No objection. [575]

Trial Examiner Erickson: It will be received.

(Thereupon the document referred to was marked as Respondent's Exhibit 2-A and 2-B, and was received in evidence.)

RESPONDENT'S EXHIBITS No. 2-A and 2-B

NATIONAL LABOR RELATIONS BOARD

Twenty-First Region

U. S. Post Office and Courthouse

Los Angeles, California

August 13, 1941

In reply please refer to:

Lettie Lee, Inc.

Case No. XXI-C-1807

Lettie Lee, Inc.

719 South Los Angeles Street.

Los Angeles, California

Att: Mr. Sam Bothman

Gentlemen:

In confirmation of our telephone conversation of

(Testimony of Sam Bothman.)

today. I understand your position in the above-named matter to be as follows:

1. That you have approximately 100 production employees, of which 19 or 20 are out on strike.
2. That you consider your entire shop as a unit appropriate for the purpose of collective bargaining.
3. That you do not consider the cutters as a separate unit.
4. That normally you have employed in the Cutting Department approximately 8 individuals, of which 6 or 7 are now out on strike.

As you know, the Union contends that the Cutting Department is a unit appropriate for the purpose of collective bargaining, and allege that they have a majority of such workers as members in the Union, and charges your Company with an unfair labor practice; that is, refusal to bargain.

It may be necessary to conduct a formal hearing on this matter and I am enclosing a commerce questionnaire. Please furnish us with the information requested at your earliest possible convenience for the period from January 1 to July 1, 1941. If this is not practical furnish the information for the calendar year ending December 31, 1940. In addition to this information please furnish us with a current pay roll of your employees, including the names of those who are out on strike and designate those who are employed or who were employed

(Testimony of Sam Bothman.)

before they went out on strike in the Cutting Department. This pay roll will be held confidential by us and is used for the purpose of checking the Union designations.

Please let me know if I have stated your position correctly above, or if there are any changes or additions, please advise. Your cooperation is appreciated.

Very truly yours,
D. C. SARGENT
Field Examiner

DCS/dp

Enc. 1

Mr. Shapiro: Will I wait until your Honor has read it?

Trial Examiner Erickson: No, go ahead.

Q. (By Mr. Shapiro) I will show you now a letter on the stationery of Lettie Lee, Inc., dated September 11, 1941, addressed to Mr. D. C. Sargent, care National Labor Relations Board, signed, "Lettie Lee, Inc. by Sam Bothman." Is that your signature, Mr. Bothman? A. It is.

Mr. Shapiro: Let the record show that this is the instrument Mr. Nicoson has produced pursuant to my notice.

Q. (By Mr. Shapiro) Did you send this letter and its attached exhibits, being two in number, to Mr. Sargent, pursuant to his letter request?

A. I did.

(Testimony of Sam Bothman.)

Mr. Shapiro: You have seen this, of course?

Mr. Nicoson: Yes.

Mr. Shapiro: I will offer the letter and the exhibits attached as Respondent's Exhibit 3.

Mr. Nicoson: No objection.

Trial Examiner Erickson: It will be received.

(Thereupon the document referred to was marked as Respondent's Exhibit 3-A, 3-B and 3-C, and was received in evidence.) [576]

RESPONDENT'S EXHIBIT No. 3-A

LETTIE LEE, INC.

Dresses . . . Sports . . . Afternoon . . . Evening

719 South Los Angeles Street

Telephone Trinity 0571

Los Angeles

September 11, 1941

Mr. D. C. Sargent

c/o National Labor Relations Board

Twenty-First Region

United States Post Office and Court House

Los Angeles, California

Dear Sir:

Replying to your letter of August 13th, 1941, please be advised of the following facts:

Number 1. That on July 25th, 1941, we had one hundred fifteen production employees in our organization of which between nineteen and twenty went out on Strike.

Number 2. We consider our entire shop as a unit

(Testimony of Sam Bothman.)

appropriate for the purpose of Collective Bargaining.

Number 3. That we do not consider the cutters as a separate unit.

Number 4. That normally we have employed in the cutting department fifteen individuals of which six or seven are now out on strike.

As per your request you will find herewith attached a list of the fifteen employees in our Cutting Department on the above mentioned date. Also, you will herewith find attached answers to the questions on your form C.R. Line 1.

Trusting this is the information you desire, I remain,

Yours very respectfully,
LETTIE LEE, INC.
SAM BOTHMAN

SB:df

(Testimony of Sam Bothman.)

RESPONDENT'S EXHIBIT No. 3-B

LETTIE LEE, Inc.

Dresses . . . Sports . . . Afternoon . . . Evening

719 South Los Angeles Street

Telephone Trinity 0571

Los Angeles

Sept. 11, 1941

The following is a list of the facts as per your request:

Period: January 1 to December 31, 1940

1. Lettie Lee, Inc

719 S. Los Angeles St.

Los Angeles, Calif.

2. Incorporated on January 19, 1939 in the State of California.

The Officers are: Lettie Lee.....President

Mrs. R. H. Thain.....Vice-President

Sam Bothman..Secretary-Treasurer

3. Dress Manufacturing.

4-A Rayons, threads, buttons, buckles, and zippers.

Amount of purchases: \$151,000.00

4-B Out of State purchases: \$136,000.00

5-A \$10.75 and \$12.75 dresses

Sales: \$397,000.00

5-B Out of State sales: \$250,000.00

6. We concede the jurisdiction of the National Labor Relations Board.

LETTIE LEE, INC.

By

(Testimony of Sam Bothman.)

RESPONDENT'S EXHIBIT No. 3-C

LETTIE LEE, Inc.

Dresses . . . Sports . . . Afternoon . . . Evening

719 South Los Angeles Street

Telephone Trinity 0571

Los Angeles

Our Cutting Room consists of the following people January 1st, 1941 to July 25th, 1941.

Bundling	}	Sarah Giochetti	[Illegible]
Girls		Marie Chavez	
	}	Frances Avila	
		Saloma Sesma	

Louis Swartz

Vito Cimarusti✓

Angelo Castello✓

Mort Litwin✓

× Eunice Usher

Joe Sardo✓

Louis Baliber✓

Don Quinn✓

Nolan Berteaux✓

× Dorothy Richard

× Katharine Lembke

× Female Cutters?

Bundling girls sort and wrap material after the cutters are thru with it.

Trial Examiner Erickson: You understand that you must furnish duplicates of these?

Mr. Shapiro: Yes. It will be simple to make a duplicate of the letter we offered, and of which we have a carbon copy, but this other will be a little more difficult.

(Testimony of Sam Bothman.)

Can you, Miss Reporter, make a copy of this at our expense for us?

The Reporter: Yes.

Mr. Shapiro: Of both, then.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) Now, you received certain letters from Mr. Sokol between the time that you received the letter from the National Labor Relations Board, which has just been offered in evidence, and the date that you replied to it, did you not, Mr. Bothman? A. I did.

Q. And you testified, I believe, that you did not reply to Mr. Sokol's letters? A. Yes, sir.

Q. Will you state to the Court why you didn't reply?

A. The reason that I didn't reply to his letters was because I didn't think that he was an authorized agent for my employees or for the employees of Lettie Lee, Inc., and immediately upon the receipt of the letter from the National Labor Relations Board, I answered the letter to them stating [577] the facts as they were in our factory, and I, therefore, saw no reason whatsoever until any time that the National Relations Board designates who should act as an agent for the employees of Lettie Lee, Inc., that I should confer with, bargain with, or in any way talk to anyone else other than the one properly authorized and designated by the National Relations Board.

Q. Did you believe that in your letter of September 11th to the National Labor Relations Board, to

(Testimony of Sam Bothman.)

Mr. D. C. Sargent, that you had complied with whatever was required of you, concerning any communications relative to union representation?

Mr. Nicoson: We object to what he believed.

Trial Examiner Erickson: Sustained.

Q. (By Mr. Shapiro) Did the fact that you had received a letter from the National Labor Relations Board, and that you had replied to it in accordance with the two exhibits that have just been offered and received in evidence,—did that have anything to do with your not calling Mr. Sokol? A. Definitely.

Q. What did it have to do with it?

A. I thought that I had answered the questions—

Mr. Nicoson: I object to what he thought.

Trial Examiner Erickson: All right. Answer the question without your thoughts. [578]

The Witness: I answered the letter to Mr. Sargent, because I was under the impression that the National Labor Relations Board handled everything pertaining to labor and employees, and, therefore, an answer to them was sufficient, and if anything else was required from me, that they would notify me immediately.

Mr. Nicoson: I move to strike out his impression.

Trial Examiner Erickson: Let it stand.

Mr. Shapiro: I think it goes to the weight, rather than the admissibility.

Q. (By Mr. Shapiro) Did you receive any

(Testimony of Sam Bothman.)

other or further notifications from the National Labor Relations Board until the complaint was served on you in this case?

A. Pardon me? I didn't get that question exactly.

Q. After you wrote the letter of September 11th to Mr. Sargent, did you receive any more mail from the National Labor Relations Board?

A. It seems to me like I received either a letter or a telephone call, asking me to contact Mr. Sargent again, because I know I was up in Mr. Sargent's office, so I don't recall whether I received a letter or a telephone call in reference to that.

Q. Did you go to Mr. Sargent's office?

A. I did.

Q. And was this particular situation discussed? [579]

A. It was.

Q. Did you make plain your position to him?

A. I did.

Mr. Nicoson: Will you please fix a time?

Q. (By Mr. Shapiro) When was that with respect to September 11, 1941, Mr. Bothman? September 11th is the date that you wrote to Mr. Sargent.

A. Well, let's see. I think I made two trips there. It seems to me like one of the trips was before I wrote the letter, and I am not sure whether the second one was before the letter was written or after the letter was written. I am not exactly positive of that. However, I did state my position to Mr. Sargent, and he said that the union

(Testimony of Sam Bothman.)

had stated their position, and that evidently there would have to be a hearing on this matter. So he asked me for certain information, which I gave him in the letter.

Q. Then was the next thing that you heard from anyone the complaint that was filed in this action?

A. As far as the National Relations Board is concerned?

Q. Yes.

A. Why, it was quite a long time afterwards before I got that complaint. Then Mr. Cobey, who at that time was handling this case, I think, contacted me by phone, and I went over and talked to him. I don't remember the exact dates of these conversations, however. [580]

Q. Did you ever ignore any letters or telephone communications from the National Labor Relations Board?

Mr. Nicoson: I object to that. It calls for a conclusion. Ignoring letters, I don't know what he means by that. If he wants to say——

Mr. Shapiro: I will reframe the question.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) Did you ever fail to reply to any letter or any telephone communication from the National Labor Relations Board?

A. No, sir, not that I know of.

Q. Mr. Bothman, how long have you been in the dress manufacturing business?

A. Oh, approximately 14 years.

Q. Were you ever in business for yourself?

(Testimony of Sam Bothman.)

A. Yes, sir.

Q. And always as a manufacturer of ladies garments?

A. Well, I have been in other business besides the manufacturing. I have been in the retail ready-to-wear business previous to going into the manufacturing of ladies garments.

Q. Now, can you state, Mr. Bothman, how many employees there were of Lettie Lee, Inc. on July 23rd, 1941? That is the day before the strike.

A. How many were working at that time?

Q. Yes. [581]

A. Oh, I would say approximately between 115 and 120, something like that.

Q. Now, does that number include all of your production employees? A. It does.

Q. Does it include your non-production employees?

A. What do you mean when you say "non-production employees"?

Q. Well, does it include salesmen, does it include office help, does it include employees other than those who work in the production of garments?

A. Well, it may. There may be six or eight non-productive employees, like office girls, and so forth, in that amount. However, I will have to consult the payroll to definitely find out for sure.

Q. Well, we won't take the time to do that now. Would you state then that on July 23, 1941

(Testimony of Sam Bothman.)

there were in excess of 110 or 115 production employees in your plant?

A. I would say roughly that that is true, yes.

Q. Will you state to the court what your production setup is in the factory? Do you understand what I mean?

A. My production setup?

Q. Yes, how your employees are classified or grouped, what each group does, and so on.

A. A general outline of the manipulations of Lettie Lee? Q. Yes. [582]

A. Well, we have a floor space in the 719 South Los Angeles building of approximately 8,000 square feet on the 12th floor, and about 3,000 square feet on the 7th floor. We manufacture High-Style ladies dresses.

Q. What do you mean by "High-Style"?

A. High fashion. In other words, not the average run of dress, but what is termed as a high fashion dress, high styled. "High-style", in other words, is a term used in the dress industry to designate the type of dress, or a type of dress.

Now, there are such things as a tailored dress, a shirtmaker dress, a fancy dress, a high-style dress, a draped dress. But Lettie Lee comes under the category of more or less a high-style item.

Q. All right.

A. Miss Lee has been designing extremely high priced dresses for a number of years. She is nationally known as a high style designer, originator of styles, and formerly her merchandise was

(Testimony of Sam Bothman.)

sold for as high as two and three hundred dollars retail per garment.

Therefore, when we decided to go into a more popular priced garment, which now sells for around \$22.75 to \$25.00, she designs along the same lines as she formerly designed while she was making the high priced things. So, therefore, the manipulations of the Lettie Lee factory are very much [583] more intricate than the average dress factory that has been spoken of previously by other men in this hearing.

Q. All right. Now, you have told us the type of garment that you manufacture, and you have given us some of the background. Will you continue and give us your production setup, what units you have, how they operate, how they are related to each other, and so on?

A. Well, we have in our factory the same type of operation, as far as units are concerned, that you will probably find in other factories.

Q. What are they?

A. Well, we will take first the designing room. We have the designing room where girls bring out the first design and make the first original pattern.

Q. Do you know how many employees you have in your designing room now?

A. Well, they vary. Sometimes from five to seven. Sometimes four to three. They vary at different times of the year. It all depends on how busy we are.

(Testimony of Sam Bothman.)

Q. All right.

A. Then from the designing room, the first operation usually goes into—after the first design is made and the pattern is made and corrected, it goes into the cutting room. Then we have what we call the cutting room, in which the first duplicates are tried out. Then after the pattern is [584] cut then the pattern is graded and then it is ready for operation for the factory.

Now, on this particular cutting room, it is on the same floor as the balance of our factory is. It is on the 12th floor. It is separated by a partition, approximately seven feet high, and within that enclosure the cutters and the bundling girls and the stock, the material from which they cut, is kept.

Q. Is that completely shut off from the rest of the plant?

A. Oh, no, it is not completely shut off. There is an opening in between one place, and then there is a counter at the end, so it isn't completely shut off. It is partitioned off.

Q. Is it correct that one end has no partition or other enclosure?

A. Other than the counter in front.

Q. I see. That is a low counter, is it?

A. Yes, it is the standard size counter, probably not as high as that table (indicating).

Q. Somewhere around three feet in height, would you say?

A. Around that, yes.

Q. Now, what is there in this cutting room?

(Testimony of Sam Bothman.)

A. There are other tables, and shelves that hold the materials.

Q. And how many other tables are there? [585]

A. Let's see. I think there are three double tables, which means that six tables run practically the full length of the cutting room, from the opening of the cutting room to the window.

Q. All right. Now, is there anything else you want to tell us about this cutting room or the cutting department, before we get into the next stage?

A. Well, the cutting department consists of the cutters and the bundling girls; that is one enclosure, and they all work together, to bring out the garments from that particular room.

Q. When the cutters and the bundlers finish their operations on a garment, what is the condition of that garment?

A. Well, it is still in its very first stages, because the dress is not made up in any way, shape or form. The pieces are merely cut out. First the cutter cuts the garment.

If I may go into that in a little more complete manner, a number of years ago when the cutting industry, or when the dress industry first started out, cutting was considered one of the most important sciences in the business. But gradually as the industry became older, people began to learn more new things in reference to all parts and divisions of the industry.

(Testimony of Sam Bothman.)

There was a time when a cutter would spend hours making a marker because the cost of materials was so much more than the wages that it was important that that man should switch [586] patterns, and spend hours and hours making a marker.

But today, with the silk position out of the picture and the acetate in, the hours of time a man would lose in trying to save a quarter of a yard of material, of acetate, would be more than made up, if he would have lost the quarter of the yard and not lost the time in doing it.

So, therefore, taking all those things into consideration, we were forced in the past few years to try to figure out a way in which we could operate and still at the same time compete with the New York market, which has such a terrific volume of business and cuts in such larger scales, so that we could stay in business and compete with them at the same price.

So, therefore, we tried out a few years ago a system of carbon markings. By carbon marking, I mean we lay out one piece of paper. Then we lay carbon papers down, and we make sometimes six, sometimes five, sometimes eight, and sometimes ten markers at one time. In doing this, we eliminate the time of making a marker, if a certain lot of the same style numbers come in.

We found out that it takes just as long, if not longer, to make a marker than it does to cut out a lot of material. So, therefore, we established

(Testimony of Sam Bothman.)

this system, and by running the system it was only necessary that we hire one or two, or maybe three, real skilled employees in the cutting room, [587] because any chopper, after the marker is made, can finish and complete a lot of dresses.

Q. Now, may I interrupt you at this point, and ask you to tell the Court what you mean by the term "chopper"?

A. Anyone that has experience in cutting, and when I say "cutting"—well, by a chopper I mean a person who can either use a cutting machine, or follow the lines around the pattern and cut out the material.

Now, that term "chopper" is a term applied in the cutting departments all over the country, and it doesn't necessarily mean that the man is capable of making a marker. All it really means is that he is capable of cutting out, and chopping out the material. What it implies is really what it means.

Now, do you mind reading back just before the interruption?

Mr. Nicoson: I object to that. The witness does not need to prompt himself by the record.

Trial Examiner Erickson: You may read it.

(The portion of record referred to was read.)

The Witness: Thank you. Now, the particular operation in our cutting room, therefore, after we had inaugurated this system, was to make the markers for the complete line in carbon form. In doing this, it was not necessary that we stand at the

(Testimony of Sam Bothman.)

side of every cutter and measure up the lays, as far as yardage was concerned, because we had a master marker, who told us exactly how much each cutter would take. [588]

Therefore, in 90 to 95 per cent of the cases in the Lettie Lee factory, no one made markers except either Mort Litwin or Mr. Swartz. They were really all choppers. They may have been cutters. I am not saying that they weren't full-fledged cutters, but as far as in the Lettie Lee, Inc. factory was concerned, when a man or a woman does 95 per cent chopping and five per cent marking, I would deem them all choppers. I am not saying that they weren't cutters, but I say that in the capacity that they were employed and working at Lettie Lee is that they were all choppers.

Therefore, the girls who have been questioned on the stand, Miss Usher and Miss Lembke——

Mr. Sokol: I object to this——

The Witness: ——and Miss Richard——

Mr. Sokol: Just a moment. This is going a little far, Mr. Examiner. We are supposed to proceed by question and answer.

Trial Examiner Erickson: Well, I will sustain the objection.

Mr. Shapiro: I think if anything, your Honor, the narrative form probably would save a great deal of time.

Trial Examiner Erickson: I do too, but if there is objection, I will have to sustain it.

Mr. Shapiro: Is there any legal requirement

(Testimony of Sam Bothman.)

that we have to proceed by question and answer?

[589]

Trial Examiner Erickson: No, I don't think there is any legal requirement.

Mr. Sokol: I want to be in a position to object to every word he says at the proper time.

Trial Examiner Erickson: Go ahead. I have ruled.

Mr. Shapiro: All right.

Q. (By Mr. Shapiro) Now, with respect to the three ladies and you have named, Miss Lembke, Miss Richard and Miss Usher, how do you classify the service rendered by them?

Mr. Sokol: That is objected to.

Mr. Nicoson: I object.

Trial Examiner Erickson: The question is, how do you classify?

Mr. Shapiro: Yes, your Honor. After all, he is the employer, and he knows.

Trial Examiner Erickson: Well, they have been classified on the payroll, haven't they?

The Witness: Certainly.

Trial Examiner Erickson: All right. You may answer.

The Witness: I classify them as choppers or cutters, just the same as the other employees in that particular department, because their duties were the same. When we handed them a ticket, they walked over to the rack where the markers were, and they spread out their paper, spread out their material, put the marker on it, and cut

(Testimony of Sam Bothman.)

around it. [590] If it was a large enough quantity of dresses to use the machine, they used the machine. If it was a small quantity, they used the scissors, and, therefore, they performed in exactly the same manner as anyone else does in the cutting room.

Q. (By Mr. Shapiro) Including the men?

A. Including everyone in the cutting room, with the exception of the bundlers, who had a different part, a different type of work to do other than actually cutting the dress.

However, the dress was still apart, according to the manipulation of the cutting room.

Mr. Nicoson: I object to that, and move to strike that out.

Trial Examiner Erickson: It may be stricken.

Q. (By Mr. Shapiro) Now, after the work of the cutting room or cutting department was completed, what happens to the garment then?

A. After the cutting process?

Q. Yes, where does it go?

A. You mean after the raw material has just been cut out?

Q. Yes.

A. It goes from there over to the bundling table.

Q. All right.

A. (Continuing) Which is right there, and sometimes it stays right on the table and a girl might come over to that [591] same table and

(Testimony of Sam Bothman.)

bundle it. However, in our particular factory it goes to one of the bundling tables.

Q. And there is first assorted and assembled; is that right?

A. It is there marked, which is a very important operation.

Q. Now, will you explain to the Court——

Mr. Nicoson: I move to strike that.

Mr. Shapiro: That may go out, that it is a very important operation.

Trial Examiner Erickson: It may be stricken.

Mr. Nicoson: I move to strike all of it as not being responsive. Counsel led the witness up to it, and he wouldn't even answer that way.

Trial Examiner Erickson: Read the question and answer again, please.

(The question and answer were read.)

Trial Examiner Erickson: All right. Continue from "it is there marked."

Q. (By Mr. Shapiro) All right. Tell us what you mean by "it is there marked".

A. The pieces that have been cut out by the cutters are laid down on the table, and then the assorting girl goes over to the pattern rack, gets the pattern, and if there are darts or cutting lines, she marks those lines, so that the cutting operation in some of Lettie Lee's intricate dresses would not mean a thing if those lines, those guide [592] lines, were not there to follow up in the dress.

Mr. Nicoson: I move to strike out the intricate part of Lettie Lee.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Let it stand.

Mr. Nicoson: Let them tell what they do.

Trial Examiner Erickson: Tell what they do.

The Witness: Sir?

Trial Examiner Erickson: Tell what they do.

The Witness: Well, they——

Mr. Nicoson: May I have that stricken, please?

Trial Examiner Erickson: No, I will let it stand.

Q. (By Mr. Shapiro) The query now is what do the bundlers do?

A. They mark the dresses so that the operators will know where to sew, how to sew by, because if they did not have this marking, they might sew a skirt onto a sleeve, they might forget to put the darts in, the blouses would not fit the skirts, and therefore, without these marks 80 per cent of our garments or 90 per cent of our garments, I would say, would come through the factory mis-fits.

Q. Is a garment, or that portion of it, after it has been cut by the cutters, is it ready to go to the operators before it has been marked by the assorters? A. No, sir.

Q. Is it possible to do that and obtain a legitimate [593] finished product?

A. Not unless the cutter would mark the dress so that the operator would know exactly how to go about it, because sometimes there is in a bundle, oh, three different kinds of material.

(Testimony of Sam Bothman.)

Q. Do your cutters mark any of the dresses that they cut, Mr. Bothman?

A. Well, our general procedure is to have the bundling girls do that.

Mr. Nicoson: I object to that as not responsive.

Trial Examiner Erickson: All right. Answer the question.

Mr. Nicoson: Answer the question "yes" or "no."

Q. (By Mr. Shapiro) Do your cutters do any of the assorting? A. No.

Q. Or the marking? A. No.

Q. All right. What is the next department or stage that the dress goes to after it is assorted or bundled?

A. It goes over to the machines, the sewing machines.

Q. Is that the same place as you have previously referred to as the operators?

A. That's right.

Q. All right. What happens to the garments there? Give us the first stage of the machine. Where does it go to first, [594] and what do they do to the garment?

A. As a general rule they are handed out to an individual operator, who sews her dress as far as she can go before it goes to the, what was termed before as the second draper, but which really is the under-draper.

(Testimony of Sam Bothman.)

Q. All right. Please explain that, Mr. Bothman.

A. The under-drapeer is the one who takes the dress from the operator and puts it on the form, and checks up whether the waist lines are right, and sees if the operation has been satisfactory.

Sometimes it is necessary to put a little hand draping on the dress before it can be sewn by the machine. She does all that and then sends it back to the operator again. However, if the dress does not need that type of work, she merely lines out the bottom, gets the proper length, and sends it back to the operator to put on the ribbon, so that it can go to the next stage of the operation.

Q. And what is the next stage of operation?

A. After it has gone back to the operator?

Q. Yes.

A. Well, from there it goes to the pinker.

Q. By the way, how many operators do you employ?

Mr. Sokol: When?

Q. (By Mr. Shapiro) Well, let us say on July 23rd. A. At this date? [595]

Q. July 23rd, the day before the strike.

A. Oh, I don't know the exact number. I would say—probably roughly speaking, I would say about 45, something like that; 40, 45, 50.

Q. And how many second drapers or under-drapers did you employ on the same date?

A. Oh, let's see. Probably two or three; maybe

(Testimony of Sam Bothman.)

four. I don't know exactly how many on that particular date. However we have what we call an interchangeable group of under-drapers and top drapers. They amount to probably eight people. They some of them do top draping and some do under-draping, and they interchange.

Q. Mr. Swartz used the expressions "first draper" and "second draper". You use "under-dra-
per" and "top draper". A. Yes.

Q. But you mean the same thing?

A. It is the same operation.

Mr. Nicoson: Which is which?

The Witness: Under-draping is the draping on the garment when it first comes from the operator and the product is not finished, and top draping or last draping is on the finished product.

Mr. Nicoson: May I ask a question?

Mr. Shapiro: Yes.

Mr. Nicoson: The under-dra-
per and the second-
dra- [596] the same?

The Witness: It was termed as a second draper.

Mr. Nicoson: As Mr. Swartz used it?

The Witness: Yes, sir.

Mr. Nicoson: That is the same as the under-
dra- per?

The Witness: Yes.

Mr. Nicoson: And what you are referring to as the top draper is the same as Mr. Swartz referred to as the first draper?

The Witness: That's correct.

Mr. Nicoson: Thank you, sir.

(Testimony of Sam Bothman.)

Q. (By Mr. Shapiro): After it comes back to the operator, it goes where?

A. It comes back from the under-draper.

Q. To the operator?

A. Then it goes to the pinker.

Q. What is the pinker?

A. The pinker is the girl that pinks the seams on the dresses. It is a minor operation. However, it goes through a machine that forms a zigzag line on the edges of the material, to keep it from raveling.

Q. How many pinking machines do you have?

A. Two. That is, I have two on the 12th floor.

Q. How many do you have on the 7th floor?

A. I think there is one on the 7th floor. [597]

Q. How many are there usually in use?

A. Well, that all depends. Now, there are certain types of garments where there is very little pinking on. They are finished seams. Then there are times when it takes two girls to keep up with the pinking, and, on the other hand, there are times when it may only take a girl half of her time to keep up with the pinking. Those girls who do that kind of work also do trimming, and put in hems, and they are interchangeable in the factor.

Q. All right. Now, after the pinking process, what happens next?

A. After the pinking process, they go to the trimmer or either they go to the hemmer, whichever is the most convenient. Usually to the hemmer first to have the hem put in.

(Testimony of Sam Bothman.)

Q. What does the hemmer do?

A. Well, it forms a hem on the bottom of the skirt, and if it is a straight line skirt we usually put a two and a half to three inch hem in, and if it is a circular skirt, it is usually a very small hem that is put in with a blind stitch.

Q. Is that done on a machine?

A. Surely.

Q. How many hemmers do you have?

A. We have one upstairs and one downstairs.

Q. Do you use one or both of the machines customarily?

A. Well, it all depends on how busy it is. If the factory [598] is busy and there is need for it, we use both of them.

Q. Now, after the hemmer, where does the garment go?

A. From the hemmer it goes to the cleaner. That is where the threads—that is the girl that takes the threads off, all the loose threads off and cuts the long threads. That is just cleaning the dress. In other words, it is what we call a cleaner, but not from the standpoint of cleaning spots, but from the standpoint of taking threads, any long hanging threads that are left from the machines, and so forth.

Q. And how many cleaners do you employ?

A. Well, there are approximately in the busy season, I would say, upstairs there are five or six girls that do that kind of work, and probably two

(Testimony of Sam Bothman.)

or three downstairs, and it varies with the amount of work there is in the factory and also varies with the type of finishing we have on a dress. In the event there is a lot of pinking, then there is also a lot of trimming. However, if the seams are finished, then there is very little pinking and then also very little cleaning.

Q. After the cleaning, where does the garment go?

A. The next operation is what we call the first finish.

Q. Will you explain that, please?

A. The first finish is the hand stitching that a garment requires before it goes to the presser.

Q. How many first finishers do you have? [599]

A. Oh, it varies also with the amount of merchandise that goes through and the amount of first finishing on a garment. On certain garments it might take five minutes to first finish. Certain garments it might take an hour to first finish. So, therefore, we have to regulate our business according—regulate the number of first finishers according to the type of dresses that are going through. So it is pretty hard to say just exactly how many we have at all times. However, it ranges in our place between one and three; sometimes one and four.

Q. Where does the dress go after that operation?

A. After the finishing?

Q. Yes. A. It goes to the presser.

Q. How many pressers are there?

(Testimony of Sam Bothman.)

A. Four. There is one stage there that we are overlooking, as long as we want to be technical about it. That is the basting of the parts of the dress, and the under pressing.

Q. Where does that stage fit in?

A. Well, for instance, if a sleeve has to be basted, or a peplum, then, as a general rule, that is under pressed before it goes back to the operator, and then the operator, in turn, sews that particular part of the garment on the full dress.

Q. All right. Now, getting back to where we were before [600] this correction, if it is a correction, what is the next step in the progress of the dress?

A. Well, the pressing. We had gotten to the pressing.

Q. Yes. Is it finished then?

A. Oh, no. First, it is pressed, and then it goes to what we call the top dresser, and she puts the garment on the form, checks it for pads or buttons or trim, or whatever there might be, and gets it ready so that the last finisher might sew on the buttons or the trim, or whatever it might be, and complete the garment.

Q. Then is the next finisher the last person who works on the dress before it is completed?

A. That is the last, with the exception of the inspector, who looks the garment over and sees that it has come through the factory according to the samples that the number on the particular dress designates.

(Testimony of Sam Bothman.)

Q. How many last finishers do you have?

A. That also depends on the amount of finishing on each garment. There are certain dresses that may have 50 buttons to sew on, may have hand piping to sew on, and that may take an hour, or an hour and a half, or two hours. Some take 30 minutes, some two minutes. So, therefore, the number of finishers, last finishers, that will work in this operation also depends on the type of the dresses that go through the factory. [601]

Q. How many examiners are there?

A. For the examiner's process in our operation we use one girl upstairs, and if we are working downstairs we use one girl down. In the last process we check it over for threads, and to see that it checks with the sample.

Q. What is the reason that you have part of your plant on the 7th floor, and the rest of your plant on the 12th floor of the same building?

A. Well, it is rather inconvenient, and still we haven't any other place on the 12th floor, so we had to take some more space on the 7th floor, in order to be able to add machines to our factory.

Trial Examiner Erickson: Do you expect to finish today, Mr. Shapiro? Do you still feel that we will be able to finish?

Mr. Shapiro: I am afraid not, your Honor.

Trial Examiner Erickson: Then we will adjourn until 9:30 tomorrow morning.

(Whereupon, at 4:30 o'clock p.m., January 28, 1942, the hearing in the above entitled matter was adjourned until Thursday, January 29, 1942, at 9:30 o'clock a.m.) [602]

[Title of Board and Cause.]

Room 808, United States Post Office and
Court House Building,
Spring, Temple and Main Streets,
Los Angeles, California,

Thursday, January 29, 1942

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a. m.

[603]

Proceedings

Trial Examiner Erickson: The proceeding will come to order.

Mr. Shapiro: Take the stand, Mr. Bothman.

SAM BOTHMAN.

resumed the stand as a witness on behalf of the Respondent, having been previously duly sworn, and testified further as follows:

Direct Examination

(Continued)

By Mr. Shapiro:

Q. Mr. Bothman, before we leave the general

(Testimony of Sam Bothman.)

subject of how to manufacture dresses, I will hand you these two large rolls, and ask you to state what they are. A. They are carbon markers.

Q. All right. Will you open up one of them, either one?

(The witness did as requested.)

Mr. Shapiro: I think that is unrolled sufficiently. Otherwise, it will become a little bulky.

I will ask that this be marked as Respondent's Exhibit next in order, if the Court please.

(Thereupon, the document referred to was marked as Respondent's Exhibit No. 4, for identification.)

Trial Examiner Erickson: You understand that all exhibits have to be furnished in duplicate.

Mr. Shapiro: I understand. Those are made in duplicate, [605] anyway, your Honor, and before the conclusion of the hearing I will have a duplicate of each of these.

Q. (By Mr. Shapiro): Now, is this a marker or a typical sample of what has been referred to as a marker by the various witnesses in this case?

A. It is.

Q. Who makes these markers?

A. These carbon markers are either made by Mr. Litwin or by Mr. Swartz.

Q. Do any of the other cutters make markers?

A. Not carbon markers, no.

Q. All right. Now, will you explain to the Court what all of these lines and figures and mark-

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Yes.

Q. (By Mr. Shapiro): Now, throughout whatever pieces of trim there are, will you so mark this?

A. This entire section here (indicating) is trim.

Q. All right. I would suggest that you do it this way, put a pencil mark around this area and mark it "trim."

The Witness: You see, this is taffeta. Does this say "taffeta"? Let me see this front. "Flat crepe," this is flat crepe. [608]

Q. (By Mr. Shapiro): All right. Just mark it "trim" wherever the trim shows on the marker.

A. All right. This entire section (indicating) is trim.

Q. All right. Mark it.

A. Would you mind opening the marker a little farther, so that I can see it?

Q. You had better start rolling your end there or else we are going to have this all over the courtroom.

A. Now, unroll a little farther, so that I can see what the body of it is. This is trim (marking).

Q. All right. Where you are writing "trim," that portion within the confines of the particular lines is trim; is that correct?

A. That's right. Now, that (indicating) is probably the balance of the material.

Q. That is all the trim on the dress?

A. That's right.

Q. The rest is part of the——

A. That is the solid part of one cloth, one roll.

(Testimony of Sam Bothman.)

Q. I see. Do you want this unrolled any farther?

A. I don't think it is necessary, because the balance of it—well, the trim is up on this end.

Q. When this marker goes to one of the cutters, does he cut out all of this, including the trim?

A. Sometimes he does, and sometimes he don't.

[609]

Q. How is that determined?

A. Sometimes, in order to speed up production, we let them cut the body and turn the rest of the balance of the marker over to a girl, who cuts the balance of this marker out.

Q. All right. Now, does the cutter have to do anything with this marker, except to go through the process that you have explained, that is, to lay it on the table, put the cloth down and cut around the lines?

A. Well, other than the fact that he may go to the pattern rack and get the pattern, and check the marker.

Q. For what purpose?

A. Just to see there was no mistake. However, that is not usually done after a marker is made once or twice. Then it is a complete process, and it is finished.

Q. Then the cutter follows the marker and cuts it out according to the lines shown?

A. The entire workings of the operation, once they have this marker there, is to take the paper, lay the material down and follow these lines im-

(Testimony of Sam Bothman.)

plicitly. If these lines are not followed, then the garment will not come out right. In other words, all the cutter does is to cut around these lines, whether it be a stack of nine dresses, fifteen dresses, or one dress. He just follows these lines, exactly as they are drawn on this piece of paper. [610]

Q. And has nothing else to do, in so far as the cutting is concerned?

A. Nothing whatsoever.

Mr. Shapiro: I will offer at this time as Respondent's Exhibit 4, the marker that the witness has testified about, your Honor.

Mr. Nicoson: I object to the entry of this as immaterial, irrelevant and serves only as surplusage in the record. It doesn't add anything or detract from anything in this case.

Mr. Sokol: May I ask the witness a question?

Trial Examiner Erickson: Yes.

Mr. Sokol: Who made this particular document?

The Witness: Either Mr. Swartz or Mr. Litwin.

Mr. Sokol: You don't know, do you, exactly who made it?

The Witness: I know that one of them made it.

Mr. Sokol: Either one or the other. You don't know who made it?

The Witness: Either one or the other, I know made it, because there is no one else that makes markers in our place.

Mr. Sokol: Will you please answer the question? Do you know, of your own knowledge, who made that marker.

(Testimony of Sam Bothman.)

Mr. Shapiro: He has already answered the question. He has stated it was made by either one of them. [611]

Mr. Sokol: I want to know exactly if he knows who made it.

Trial Examiner Erickson: The objection will be overruled. It will be received.

(Thereupon, the document heretofore marked for identification as Respondent's Exhibit No. 4, was received in evidence.)

Trial Examiner Erickson: Of course, the duplicate must be furnished.

Mr. Shapiro: We will furnish it, your Honor.

Trial Examiner Erickson: Yes.

Mr. Shapiro: Thank you.

Mr. Sokol: I submit that it wasn't made under his supervision, your Honor. I am objecting on the ground of foundation. He can't testify to something he doesn't know about.

Trial Examiner Erickson: My ruling will apply to your objection, as well as the objection made by Mr. Nicoson.

Q. (By Mr. Shapiro) I have here another roll of white paper, with blue lines on it.

It might facilitate the discussion of these two markers to state that the first one, the one that is now in evidence as Respondent's Exhibit 4, has all red lines. This has all blue lines. [612]

What is this, Mr. Bothman?

A. This is also a carbon marker.

(Testimony of Sam Bothman.)

Q. And by whom was this marker made?

A. This marker was made either by Mr. Litwin or Mr. Swartz.

Q. What is this a marker of?

A. This is a marker, a replica of a particular one of the dresses in our particular line.

Q. Now, does this particular marker contain any sloping on it?

A. This particular marker does not contain any sloping. However, this entire portion of this dress has to be remarked and resloped after the material is cut off to be sent out to be pleated. That is the greatest portion of this marker.

Q. Will you explain that to the Court? What parts of the marker have to be cut out to be sent out to be pleated, and mark it with the pencil.

A. Well, I think we had better unroll more of this marker.

Q. All right. You had better start rolling your end, or else we are going to have a tangle.

A. You see, it is marked "tear out." It is already marked. You see, I don't have to mark this. It is marked "tear out." [613]

Q. Then each place where it is marked "tear out"—

A. That's right.

Q. —that is torn out by the cutters; is that correct?

A. That's right.

Q. The material is torn out?

A. That's right.

Q. And what happens to the material?

(Testimony of Sam Bothman.)

A. It goes out, either to be tucked or to be pleated, whatever it might be, in the process of this dress.

Q. Then after that portion of the material is torn out and pleated, after it comes back to the factory, where does it go?

A. It goes to the—let's see—after it comes back to the factory it has to be sloped. In other words, we call it slope; in this particular dress, you would call it recut, because a terrific portion of this dress has to go out of the house.

Q. All right.

A. You have here—so far we have unwrapped practically half this marker, and if you will notice where it is marked "tear out," that all has to go out.

Q. Now, will you unroll the rest of the marker, and will you then state what part of it includes material that has to be torn out, for the purpose of having it pleated, and what portion of it has to be cut by the original cutter? [614]

A. Well, let's see. Let's go farther back.
(Unrolling marker.)

Starting right here (indicating), you see.

Q. All right. Mark that.

A. In this panel.

In other words—let me see—this panel, this part here, this portion (indicating), I would roughly say there is about 2 yards of that garment—what is it on the end of it, Mr. Bothman? I can't see this.

Trial Examiner Erickson: This is your case,

(Testimony of Sam Bothman.)

now, Mr. Shapiro, and, of course, I can see what is going on——

Mr. Shapiro: Well, I am going to do my best.

Trial Examiner Erickson: ——but it may be reviewed by someone else, and “this” and “that” means nothing in the record.

Mr. Shapiro: I am going to ask him every point where he makes such a reference.

The Witness: That is a trim, at that end, only that is a different type of trim, because this is made out of the material and sent out to be pleated, and that (indicating)——

Q. (By Mr. Shapiro) Will you mark the part on the marker where the part to be sloped stops, and where the cutting to be done by the cutter begins?

A. Well, this part is to be sloped (indicating). [615]

Q. Is this (indicating) the part to be sloped?

A. It starts right here (indicating) and this section here (indicating) doesn't get sloped, but this section right here (indicating) does.

Q. Mark each part that is to be sloped.

(The witness did as requested.)

Q. All right. I will roll it back now, so that we will have it in order.

A. Mr. Shapiro, where that line is there (indicating), that part is the trim.

Q. All right. Let's mark that.

A. Starting in there (indicating), that is the trim.

(Testimony of Sam Bothman.)

Q. All right. Roll it up to that point, and mark it as "trim."
A. All right.

(The witness did as requested.)

Mr. Shapiro: Sorry, your Honor, but this is so awkward.

Trial Examiner Erickson: It is not a bit awkward, if you will let the record know what you are talking about.

Mr. Shapiro: I will do my very best.

Q. (By Mr. Shapiro) Now, you have written "trim" in the last rectangular space on this marker; is that correct?
A. Correct.

Q. All right. Now, let's roll it back the other way, [616] and mark every part of it that has to be sloped. You have only marked one so far. Let's not roll it out so long this time, and I think it will be easier.

A. I have got that one marked (indicating).

Q. Now, as you come to any others that are to be sloped, please write it in.

A. It is understood that where I mark "sloped," it takes in the entire blue——

Q. The entire enclosure?

A. Enclosure.

(The witness marked the exhibit.)

Q. Is that all of it?
A. Yes, sir.

Q. Now, you have written the words "to be sloped" in every portion of this marker where there is written in blue pencil "tear out."

A. Correct.

(Testimony of Sam Bothman.)

Q. Is that correct? A. Correct.

Q. Those parts are torn out and sent out to be pleated, and then when returned to the factory are sloped—— A. Correct.

Q. What is done with the other portions of this marker not indicated as to be sloped?

A. That is laid on the material, and the material cut out [617] laid aside until the parts that were torn off are pleated and sloped. Then they are all assembled by the bundling girl.

Q. Now, what does the cutter have to do with this marker, when he gets it?

A. On this particular type of a marker?

Q. On this particular type of a marker.

A. He takes the material, tears off the pieces that go out to be sloped, and lays the marker down on the material for the balance of the dress. The balance of the dress in this particular case would take about two yards and a quarter, it looks like, just roughly guessing, and the sloping would take about the same amount. And when the marker had marked in the trim, which was about a yard, so if he was working with somebody who cuts the trims, why, he cuts off that part of the marker that is marked "trim", and gives that to the girl or whoever else would be cutting the trim part.

Q. It would not necessarily be a girl, would it?

A. Not necessarily, but, however, when they work with the girl, the girl and the cutter work together, to make it speedy, if she is to cut the trim, he would cut off that part of the marker and hand

(Testimony of Sam Bothman.)

it to her, and he would cut the body, and she would cut the trim.

Q. (By Trial Examiner Erickson) Let me ask you a question. [618] You said he would tear out the part to be sloped? A. That's right.

Q. What does he do with it?

A. He takes it over to the bundling girl and she sends it out to be pleated, or tucked, whatever it may be.

Q. Without cutting it? A. That's right.

Q. Who cuts it?

A. When it comes back from the pleater, the girl who does the sloping cuts it.

Q. From the tear-off on this particular exhibit?

A. That's right.

Q. (By Mr. Shapiro) And does she use the marker? A. Sure. She uses a pattern.

Q. This same pattern?

A. No, she has to go and get the pattern.

Q. The original pattern?

A. The original pattern.

Q. (By Trial Examiner Erickson) Just a minute. I asked you if she used the tear-off. Now, you say you tear off the particular parts to be pleated?

A. The material, yes.

Q. What do you mean? You tear off the paper that you have in that exhibit, or you tear off the cloth?

A. The cloth, the amount of cloth, the exact same size [619] as this piece of paper.

Q. So the cutter—— A. Tears that off.

(Testimony of Sam Bothman.)

Q. —tears that from the cloth and not from the paper.

A. As a general rule, it comes out together and he takes this piece of paper and throws it away.

Q. I want you to be clear on that. Is it the cloth or the paper that is torn out, that is shown on that exhibit? A. The cloth is torn off.

Q. (By Mr. Shapiro) Then after it is pleated, it goes to whoever does the sloping and is then cut by that person; is that right?

A. That's right.

Q. And in so cutting it she follows the original pattern; is that right? A. That's right.

Trial Examiner Erickson: Is that the same pattern you are showing us now, or is that another pattern?

Q. (By Mr. Shapiro) Will you explain that, Mr. Bothman?

A. The pattern that we have here, that the cutter tears out the material which has to go out and be pleated. So, therefore, she has a pattern of that dress that is laid down on the material after it is pleated. In other words, this is sent out and it comes back half the size that it is when it went out. [620]

Trial Examiner Erickson: That is exactly what I have been worried about for quite a long time during this hearing. When she gets back the pleated material, she then has a design that is the particular piece that she is supposed to slope, and not a design such as you have in that exhibit.

(Testimony of Sam Bothman.)

The Witness: No. This piece of—you mean, the sloper, when she gets it back?

Trial Examiner Erickson: That is right.

The Witness: She has a pattern of the material after——

Trial Examiner Erickson: Of the particular piece of cloth that she is supposed to slope?

The Witness: That's right.

Trial Examiner Erickson: That is right. So what she gets is a piece of paper that is one of the portions of the exhibit that you now have in your hand, that you have marked for sloping; is that right?

The Witness: No. This particular process that we have here is not the pattern that she used to slope on.

Trial Examiner Erickson: I understand that. I know that. You have now a complete dress in design on paper.

The Witness: That's right. That is up to a point.

Trial Examiner Erickson: And you hand that to a cutter, don't you?

The Witness: That is right. [621]

Trial Examiner Erickson: That cutter does certain operations——

The Witness: Correct.

Trial Examiner Erickson: ——from that design, which we will say is an entire building?

The Witness: Yes.

Trial Examiner Erickson: There are certain por-

(Testimony of Sam Bothman.)

tions of that design that require a trim other than the original raw material, such as what we call pleating, or you have called pleating here?

The Witness: Yes, sir.

Trial Examiner Erickson: The cutter takes that—we will call it a building—and he does certain operations upon that building, or that design.

The Witness: That's right.

Trial Examiner Erickson: In his operations he sees that certain materials that you have marked on there as going out for pleating, or whatever operations are required outside of your own plant, should be sent out. He either cuts a block, or whatever operation he has to do, and marks that, and it is sent out for that particular operation; is that right?

The Witness: That's right.

Trial Examiner Erickson: It comes back——

The Witness: It comes back to the cutting room. [622]

Trial Examiner Erickson: It comes back to the cutting room?

The Witness: That's right.

Trial Examiner Erickson: And somebody like Eunice——

The Witness: Yes.

Trial Examiner Erickson: ——takes that material after it has been pleated, and after it has been cut out by the cutter, and she then has a different piece of paper than the one you have here before you on the witness stand, which is a design

(Testimony of Sam Bothman.)

that she is supposed to follow to cut out from that material; is that right?

The Witness: That's right.

Trial Examiner Erickson: All right. Proceed.

The Witness: That's correct, sure.

Mr. Shapiro: We will offer this marker as Respondent's Exhibit No. 5.

Mr. Sokol: The same objection.

Trial Examiner Erickson: The objection is overruled. It will be received.

(Thereupon, the document referred to was marked Respondent's Exhibit No. 5, and received in evidence.)

Q. (By Mr. Shapiro) Mr. Bothman, it has been stipulated in this case that Joe Sardo has been convicted of a felony.

Mr. Nicoson: It has not been stipulated.

Mr. Sokol: I never heard it. [623]

Mr. Nicoson: There is no such stipulation in the record.

Trial Examiner Erickson: It has been admitted, then.

Mr. Nicoson: It has been testified to.

Mr. Sokol: Oh, he testified to it?

Mr. Nicoson: Yes.

Trial Examiner Erickson: All right. Proceed.

Mr. Nicoson: He testified, but no stipulation.

Mr. Shapiro: I will strike that question, then.

Q. (By Mr. Shapiro) Joe Sardo, one of the complainants in this case, has admitted from the witness

(Testimony of Sam Bothman.)

stand that he was convicted of a felony, to-wit, the crime of grand larceny.

Trial Examiner Erickson: Well, in a Michigan court?

Mr. Shapiro: Yes. I just want to get it correct.

Mr. Nicoson: Wisconsin.

Mr. Shapiro: In Wisconsin.

Trial Examiner Erickson: Or Wisconsin.

Mr. Shapiro: In the State of Wisconsin.

Trial Examiner Erickson: Grand larceny.

Mr. Sokol: Maybe the man is entirely wrong. May I have a few minutes, your Honor, for the reason that a man may be convicted of a felony, but if he is sentenced to a term less than a state's imprisonment term, it is not a felony. [624]

Trial Examiner Erickson: What has it to do with this case?

Mr. Sokol: I don't think it has anything to do with it.

Mr. Shapiro: It has a great deal to do with it.

Trial Examiner Erickson: In what respect?

Mr. Shapiro: In the first place, and least important of all, it is impeachment of the witness, Sardo. In the second place, it bears directly on the question of the necessity that the employer reinstate Mr. Sardo. I am prepared to cite authorities in the Circuit Court that where an employee has been convicted of a felony, or for that matter any serious grade of misdemeanor, that he need not be reemployed or reinstated by the employer.

(Testimony of Sam Bothman.)

Mr. Nicoson: I would like to have those citations.

Mr. Shapiro: I will be happy to give them to you.

Trial Examiner Erickson: I would like to have them too. Proceed.

Mr. Shapiro: Do you want them now?

Trial Examiner Erickson: Proceed. Whenever you want to give them, in your brief, or your argument.

Mr. Sokol: I think they should await argument, so that we can cite counter authorities at that time.

Mr. Shapiro: I am not making that up. That is what the cases hold. I have a number of them. [625]

Mr. Sokol: There is no objection before the court.

Trial Examiner Erickson: No, there isn't. Proceed.

Mr. Shapiro: That is the purpose of the offer.

Now, I was interrupted. I will go back again.

Q. (By Mr. Shapiro) The witness, Joe Sardo, has admitted on the stand that he was convicted of the crime of grand larceny,—

Mr. Nicoson: I object to statements in the record.

Trial Examiner Erickson: No, that is in the record.

Mr. Nicoson: Well, he is making another statement. He has a witness on the stand. Is he questioning the witness or making a statement.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: The objection is overruled.

Q. (By Mr. Shapiro) (Continuing) —in the State of Wisconsin, in the year 1936, and that he served a term, I believe, of 15 months. I believe in the State Penitentiary for that crime for which he was convicted. I will ask you, Mr. Bothman, when did you first learn that Mr. Sardo had been convicted of a felony?

A. Oh, it was a few days after the strike. I don't know the exact date. A few days after the strike I heard that he was.

Q. Was that the first knowledge that you had that Mr. Sardo had been convicted of a felony?

A. It was. [626]

Q. How did you get that information?

A. I heard one of the officers make that statement.

Mr. Nicoson: I object to that, unless he states the name of the man from whom he heard it.

Trial Examiner Erickson: Objection sustained.

Mr. Nicoson: I move to strike it out.

Trial Examiner Erickson: It may be stricken.

Mr. Shapiro: It may go out.

At this time let the record show that I am handing counsel a certified record of the transcript of the proceedings involving the indictment and conviction of Joseph Sardo of the crime of grand larceny, in the State of Wisconsin, to-wit, the stealing of 20 suits of clothes of a total value of \$400, being the property of Sullivan Bros., a partnership.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Is there anything in the papers other than the admission made by the witness himself, that would serve a useful purpose in this hearing?

Mr. Shapiro: I think so. It is a transcript, which I have just received.

Trial Examiner Erickson: I know, but the witness admitted the accusation that you are making, and I can't see any reason for——

Mr. Shapiro: I think it completes the record. That is the only importance of it, your Honor. [627]

Trial Examiner Erickson: I can't see it. If you will point out to me what those are, those papers, I see there are six or seven sheets there, that will help this record, other than the admission of the witness himself, I will be glad to consider the admission of the document.

Mr. Shapiro: Well, it is cumulative, your Honor.

Trial Examiner Erickson: All right. Then we will not have it entered in the record.

Mr. Shapiro: All right.

Mr. Nicoson: Then I move to strike his statements concerning this document.

Trial Examiner Erickson: No. They will stand on the record as a part of the reason for not allowing its admission.

Mr. Sokol: Well, it wasn't offered.

Mr. Shapiro: Yes, I did offer it.

Trial Examiner Erickson: Yes, he offered it.

Mr. Shapiro: And I understand it was refused

(Testimony of Sam Bothman.)

for the reason the facts have been admitted by the man.

Trial Examiner Erickson: That is right, and because you said it was cumulative.

Mr. Shapiro: That is correct.

Trial Examiner Erickson: That is right.

Q. (By Mr. Shapiro) Did you ever ask Mr. Sardo to return to work? [628] A. No, sir.

Q. Why not?

A. I didn't think it was a good policy to have anyone come back to work that had been convicted of stealing clothes in our factory.

Trial Examiner Erickson: In your factory?

Mr. Nicoson: In your factory?

The Witness: I said, to come back in our factory; to come back to work in our factory is what I meant to say, if I misstated that.

Trial Examiner Erickson: Yes, I know, but the way you said it made a difference.

Mr. Shapiro: The construction was bad.

Trial Examiner Erickson: Yes, that is right.

Q. (By Mr. Shapiro) I will direct your attention to June 11, 1941, the date of the first meeting of the cutters with you in the cutting room.

Mr. Shapiro: I don't want to be repetitious, and, apparently, your Honor, I can't recall precisely whether I went into some of these matters, so if I did, if you will stop me, I won't repeat them.

Trial Examiner Erickson: I have a very good memory.

(Testimony of Sam Bothman.)

Mr. Shapiro: I know, and I don't want to go over the same matters twice. We are all anxious to finish.

Mr. Nicolson: We will help you. [629]

Mr. Shapiro: I am sure.

Q. (By Mr. Shapiro) (Continuing) How did you happen to attend that meeting, Mr. Bothman?

A. I was told by Mr. Swartz that the boys were asking for a raise, and that they wanted to talk to me. So I told him to have the boys wait after work, and I would come back and talk to them.

Q. And did you? A. I did.

Q. And who was present at that meeting?

A. Let's see. Mr. Litwin, Mr. Swartz and Mr. Sardo—I don't remember the boys' last names so well—Quinn, and Vito, and Berteaux, Louis, and—

Q. Well, all of the six men who are complainants in this matter? A. That's right.

Q. Who went out on strike?

A. That's right.

Q. Was there a conversation at that time, at that first meeting?

A. Oh, yes, surely. They told me they felt like they wanted a raise. And I asked them if they would rather have a raise of straight pay, or when we get busy, whether they would rather work overtime rather than take on another person, and I gave them their alternative, to decide which [630] they would rather have.

Q. All right. What else did you say?

(Testimony of Sam Bothman.)

A. That's practically all that was said at that particular discussion. I don't think it lasted more than four or five minutes.

Q. Did you ask them to make a decision then or at a later time?

A. I told them to talk it over among themselves and decide.

Mr. Shapiro: Just a minute. I don't want that passed around, if you don't mind, unless you want it to go into the record. After all, it is my property.

Mr. Sokol: Calm yourself. I thought you wouldn't mind.

(The document was returned to Mr. Shapiro.)

Q. (By Mr. Shapiro) Did you at that time state, "Which of you fellows are going to join the union?" Answer that question. A. I did not.

Q. Did you at that time state, "The Union won't do anything for you. It is just a racket. All they want is your dues." A. I did not.

Q. Did you at that time tell them anything about your brother, and the troubles that he had had operating as a union ship? A. I did not. [631]

Mr. Nicoson: I object to that. That is entirely leading. If he wants to ask him about the specific things, he can do that, but he certainly should not prompt the witness. I move to strike the answer.

Trial Examiner Erickson: The objection is overruled. Proceed.

The Witness: I did not.

(Testimony of Sam Bothman.)

Q. (By Mr. Shapiro) Did you state at that time that you would never sign a union contract?

A. I did not.

Q. Did you state at that time—and the court and the stenographer will excuse the use of this language—that all union men were sons-of-bitches and stinkers? A. I did not.

Q. Did you at that time state that you would close up the plant before you would sign up with the union? A. I did not.

Q. Did you state at that time that if the men joined the union that they would get less work than they were getting at that time? A. I did not.

Q. Did you state at that time that the union members and officials were a bunch of shysters, and just out to help themselves?

A. I did not. [632]

Q. Did you state at that time that you understood that there was going to be a strike and that you wanted to know how they stood?

A. I did not.

Q. Thereafter, was there another meeting of the cutters which you attended? A. There was.

Q. When was that, with respect to the first meeting?

A. Oh, I don't recall exactly, three, or four, or five days later; maybe it was just three days later.

Q. And was the same group there?

A. It was.

Q. Will you tell the court what conversation, if

(Testimony of Sam Bothman.)

any, took place at that time, what you said and state what anybody else said?

A. Why, I went back about a little after 4:30, and someone or other of the boys, I don't remember who it was, told me that they had decided, that they had made up their minds and they had decided to take whether the raise or overtime.

So I went back, and I said, "I understand you boys have made up your minds."

They said, "Yes, we will take the raise."

I said, "O. K. You can have your raise." And I don't recall which one said it, however, it seems to me [633] like one of the boys said, "Gee that's swell," and they seemed very well pleased, and very happy to think that they didn't have to battle for the raise.

Mr. Nicoson: I object to what they seemed, and move to strike it out.

Trial Examiner Erickson: I will let it stand.

The Witness: And then I asked the boys, I says—I told the boys, "Now, that I have given you the raise, why, after all, you know that we haven't—our business hasn't increased to a great extent, so I would appreciate it very much if you move your fingers a little bit faster and make up for the difference."

Q. (By Mr. Shapiro) What did the boys say?

A. They said they would gladly do that.

Q. Was there any other conversation?

A. No, I don't recall very much, hardly anything else that was said, with the exception of when

(Testimony of Sam Bothman.)

we started to leave, I turned around and asked the boys, "How do you feel about the Union?"

Q. And was that after you had closed the discussion and granted the raise?

Mr. Nicoson: I object to that as slightly leading.

Trial Examiner Erickson: I will let him answer it.

The Witness: We were three-fourths of the way out of the cutting room already when I asked that question. [634]

Q. (By Mr. Shapiro) And what did they say?

A. They said that—let's see—I don't recall exactly what they all said. I asked them the question, and it seems to me like they said, "No, they didn't have anything to do with the union." I am not positive about that, however.

Mr. Nicoson: I object to what it seemed, and move that it be stricken.

Trial Examiner Erickson: Let it be stricken.

Q. (By Mr. Shapiro) You don't recall what their answer was?

A. No, I can't recall exactly what they said.

Q. Now, either on June 11th or June 13th, the date of this last meeting that you have just testified about, had any of the boys told you that they belonged to a union, or that they wanted to join a union? A. No.

Q. Had the question of union membership or affiliation ever been discussed or mentioned between you?

(Testimony of Sam Bothman.)

Mr. Nicoson: By "the boys," I suppose you mean the six men?

Mr. Shapiro: The six men.

The Witness: Not that I recall. Nothing definite that I can recall, no.

Q. (By Mr. Shapiro) All right. Now, calling your attention [635] to the 24th day of July, 1941, that was the day that the strike commenced wasn't it? A. It was.

Q. When and how did you first learn that a strike was in progress?

A. I came down to the factory about a quarter to nine that morning. I was a little late. And when I reached the corner of Seventh and Los Angeles Street, I saw a great crowd of people around, and I saw a few of our workers on one corner, and a few of them on another corner. And I said to Miss Lee, who was in the car with me, "There must be some trouble, because I see our people standing around here. Some of them are not going up to work." That was the first that I knew of the strike.

Q. Did you go into the restaurant that morning where the boys usually ate and met—I don't remember the name of that restaurant.

Mr. Nicoson: The Exchange.

Q. (By Mr. Shapiro) —the Exchange restaurant?

A. Yes, I did. I went into the restaurant that morning.

Q. Did you see any of the cutters there?

A. Yes, I saw some of the boys there. I don't

(Testimony of Sam Bothman.)

recall exactly which ones I saw, but some of the boys I saw there that day.

Q. Did you have any conversation with them?
[636]

A. Very little. I talked to one or two of them for just a very short time.

Q. What did you say?

A. I said that, "I am surprised that you boys don't go up to work. Why didn't you go back to work?"

Q. Anything else?

A. And I think, it seems to me like I asked them to come back to work. That is as much as I remember that morning.

Q. Did you tell them they could come back to work, if they wanted to? A. Yes.

Q. Was there anything said about the number of your employees that had gone out on strike?

Mr. Sokol: That is leading. I object to that.

The Witness: At that particular time——

Mr. Sokol: Just a minute. I object to that. It is leading.

Trial Examiner Erickson: He may answer.

The Witness: At that particular time?

Q. (By Mr. Shapiro) At that time?

A. I might have said that "you are—the cutters are practically the only ones that are out. Why don't you come back to work?" I don't recall exactly. The reason is that it was a quick conversation. The reason I went over to the restaurant, in the first place, is because two or three girls [637]

(Testimony of Sam Bothman.)

had called on the telephone that they were being held in the restaurant by some of the officials of the union, and they asked me——

Trial Examiner Erickson: Let's have an answer to the question, please. Let's strike all that.

Mr. Nicoson: Yes, I object to that and move to strike it.

Mr. Shapiro: Don't volunteer.

Trial Examiner Erickson: Just read the last question, and you remember to answer that question.

(The question referred to was read as follows:

“Q. Was there anything said about the number of your employees that had gone out on strike?”)

The Witness: There might have been.

Q. (By Mr. Shapiro) Well, what is your best recollection? Was there, or wasn't there?

A. Well, I have a faint recollection of saying that “You boys are a very small group out of the entire Lettie Lee plant, that went out, so, therefore, I wish you would come back to work.”

It seems to me like I said that. However, I won't be sure about that, because that morning everybody was a little excited, and I don't recall the exact conversation.

Q. All right. Now, in the month of September, did you have a conversation with Vito Cimarusti in the picket line, or near [638] the picket line?

A. In December?

(Testimony of Sam Bothman.)

Q. In September. A. In September?

Q. Yes. A. Yes.

Q. All right. Who else was there besides Vito?

A. Well, Vito—in September, was that?

Q. Yes.

A. One morning in September I talked to Vito and Berteaux.

Q. You mean Berteaux?

A. Berteaux, I think it is, and Quinn, yes.

Q. What did you say to them?

A. I asked them to come back to work.

Q. What did they say?

A. Well, they said maybe they would, to the best of my recollection.

Q. Did you at that time say that you would have nothing to do with those stinkers and s-b's, let's put it that way?

Trial Examiner Erickson: No, say "sons of bitches." That's all right.

Mr. Shapiro: Don't think, your Honor, that I am timid.

Trial Examiner Erickson: No, that's all right. Let the record show. I once had a hearing where a man was thrown out on his ass, and I said he was thrown out on his [639] posterior, and I was criticized for it.

Mr. Shapiro: All right, your Honor. If it is all right with the Board, it is all right with us.

Q. (By Mr. Shapiro) Did you say at that time that you would have nothing to do with those stinkers and those sons of bitches?

(Testimony of Sam Bothman.)

A. I don't recall saying that, no.

Q. Did you say anything to them at that time with reference to Mr. Sardo?

A. I don't recall whether Mr. Sardo's name was brought up at that time.

Q. In talking to any of the boys, and when I say "boys", I mean those cutters who went out, did you at any time mention Sardo and whether you would or would not take him back?

Mr. Sokol: May we have the time and place, and parties present?

Mr. Nicoson: Yes, I think so. I will object.

Trial Examiner Erickson: Are you referring now to a recitation of the testimony that was given directly in this case?

Mr. Shapiro: Yes. I have reference to the testimony of Mr. Quinn, I believe.

Trial Examiner Erickson: So the time is the same?

Mr. Shapiro: The same time. [640]

Trial Examiner Erickson: As given by Mr. Quinn?

Mr. Shapiro: The same time.

Trial Examiner Erickson: All right. You may proceed.

Mr. Nicoson: You are talking about this time in September now?

Mr. Shapiro: Yes.

Mr. Nicoson: All right.

The Witness: I might have said that I didn't want to have Sardo back due to the fact that I had

(Testimony of Sam Bothman.)

learned since the strike that he had been convicted of a felony, and I didn't think we should have him back. I might have said that at that particular time. I am not sure.

Trial Examiner Erickson: What is the date on the transcript that you have there on this man's conviction?

Mr. Sokol: 1936, you mean?

Trial Examiner Erickson: No, I mean the date of the covering letter?

Mr. Shapiro: The letter of transmittal?

Trial Examiner Erickson: Yes.

Mr. Shapiro: January 26, 1942. I just received this from the east.

Trial Examiner Erickson: All right. Go ahead.

Q. (By Mr. Shapiro) Did you have any other discussions, either in September, or thereafter, with any of the boys while they were on the picket line or around the building? [641]

A. Yes. I think I can't give you the exact dates, but I asked the boys on the picket line to come back two or three times, to come to work.

Mr. Nicoson: Excuse me. May I have the question and answer, please?

(The question and answer were read.)

Mr. Nicoson: I move to strike the answer for the purpose of interposing an objection, and my objection is that he should say to whom he referred by "the boys."

Trial Examiner Erickson: It will be sustained.

(Testimony of Sam Bothman.)

Q. (By Mr. Shapiro) What boys did you ask to come back to work?

A. Don, and Vito, and Berteaux.

Q. Well, you mean Don Quinn, Vito Cimarusti, and Nolan Berteaux?

A. That's right.

Q. Is that right?

A. That's right.

Q. Why didn't you ask the others to come back to work?

Mr. Sokol: That is objected to as calling for the conclusion of the witness.

Trial Examiner Erickson: He may answer.

Mr. Shapiro: It is not a conclusion on his part.

Trial Examiner Erickson: No. He may answer.

The Witness: As I stated before, the reason that I [642] didn't want Sardo back was——

Q. (By Mr. Shapiro) Yes, you did.

A. Shall I repeat that?

Q. It isn't necessary. It is in the record. How about the other two?

A. Well, we didn't have a sufficient amount of business to require the full force at that particular time.

Trial Examiner Erickson: What is this date now?

Q. (By Mr. Shapiro) When is this?

Mr. Nicoson: The record shows this to be September 27th, or about that time.

Trial Examiner Erickson: And what is the payroll record on the overtime? When did that overtime stop?

(Testimony of Sam Bothman.)

Mr. Nicoson: That I am not sure. It runs through the entire period of September.

Trial Examiner Erickson: It does. All right.

Mr. Nicoson: In September, I am now noting in the record.

Trial Examiner Erickson: I am not sure that that particular part of the payroll is in the record, and that is the reason I asked. I know you have Exhibits 15-A, B, C and D, but that sheet—

Mr. Nicoson: Board's Exhibit 15-D covers the period of September 19th, and September 26th, which is the last two pay periods in September, 1941.

Trial Examiner Erickson: And that shows the overtime? [643]

Mr. Nicoson: Yes, it does.

Mr. Shapiro: Where does it? I don't recall it. Well, whatever the record shows.

Trial Examiner Erickson: The only reason I brought it up was I wasn't sure whether the particular exhibit 15 covered it.

Mr. Nicoson: 64½ hours on September 26th, and on September 19th he had 68 hours. The witness has already testified to that.

Mr. Shapiro: That is Mr. Litwin you referred to?

Mr. Nicoson: Litwin, correct.

Mr. Shapiro: And none of the others?

Mr. Nicoson: I didn't cover about any others. The record will show.

Mr. Sokol: The record will show.

(Testimony of Sam Bothman.)

Mr. Nicoson: He testified, and the record will show whether it is overtime or not.

Trial Examiner Erickson: Let's proceed. I am sorry I interrupted. I just wanted to be sure the facts were in the record.

Q. (By Mr. Shapiro) Do you know in what part of the month of September you had the conversation with these boys?

A. I don't recall the exact date, no. It was one morning. I think it was on a Saturday morning, but I don't recall the date. [644]

Q. As a matter of fact, is there any way that you can state definitely whether it was in September or in some other month? Do you have an independent recollection of exactly when it was?

A. I am almost sure it was in September. That particular morning there was a Mr. Singer that was standing out on the sidewalk, and I asked him to step over and listen to the conversation that we were having.

Q. And did he? A. He did.

Q. Now, will you state that conversation?

A. I said,—

Mr. Nicoson: I object, repetitious. He has already told us two or three times.

Mr. Shapiro: He has never stated the conversation in the presence of Mr. Singer.

Trial Examiner Erickson: He may state the conversation.

The Witness: I said, "Now, look, Quinn, and Vito, and Berteaux, I want you boys to come back

(Testimony of Sam Bothman.)

to work, and I want you to remember that I am asking you to come back to work on this particular date.”

Q. (By Mr. Shapiro) Anything else said?

A. And I said, “If you don’t come back to work, I will have to have somebody to take your place.”

Then I turned around to this gentleman, and I said, [645] “Remember you are hearing this conversation. Remember it if it is necessary that I call you to witness this at some future date.”

Q. Did you at that time state that you wouldn’t have anything to do with the union or any group, and that these men could come back individually or they would never come back?

A. I don’t recall saying that, no.

Q. Did you call Vito on the telephone on July 26th?

A. I don’t recall the exact date. I did call Vito on the telephone once, that I recall, but I don’t remember the exact date.

Q. Did you at that time state to him, “Those shysters can’t do anything for you”? Did you make that statement?

A. I can’t recall making that statement.

Q. What did you say to Vito?

A. I asked Vito to come back to work.

Q. Anything else?

A. It seems to me like I asked him why he went out, whether or not he was satisfied there. And he said, “Yes.”

And then it seems to me like he told me that the

(Testimony of Sam Bothman.)

reason he went out is some of the older boys had been in favor of it, and as long as he was the last employee that had taken the job, he didn't want to hold back, something to that effect.

Q. Did you tell him you would close the shop before you [646] would sign an agreement with the union?

A. No, I don't recall telling him that at all.

Q. Did you tell him that Miss Lee would go back to Texas and you would open a small shop of your own?

A. I can't recall telling him that.

Mr. Nicoson: When is all this happening?

Mr. Shapiro: This is the telephone conversation of July 26th.

Mr. Nicoson: Thank you.

Q. (By Mr. Shapiro) Now, Mr. Swartz has testified that he talked to Mr. Quinn at his home. Did you know that Mr. Swartz was going to talk to Mr. Quinn?

A. No, I didn't, but I know he did talk to him, because he told me of it later on.

Q. Did Mr. Swartz tell you before he spoke to Mr. Quinn that he was going to talk to him about coming back to work? A. No.

Q. Did you ever authorize or instruct Mr. Swartz, or anyone else, to talk to any of these men?

A. I did not.

Mr. Nicoson: I object to that as calling for a conclusion.

Trial Examiner Erickson: Overruled.

(Testimony of Sam Bothman.)

Q. (By Mr. Shapiro) What did you tell Mr. Swartz, when he told you that he had talked to Mr. Quinn? [647]

A. I told him he had no business going out there, that it was none of his business, that I was taking care of the situation between the employees and Lettie Lee.

Q. What did he say?

A. He didn't say very much. I didn't make an issue out of it.

Mr. Nicoson: I object to that and move to strike as not responsive.

Trial Examiner Erickson: It may be stricken. Now, answer the question: What did he say, if anything?

The Witness: I don't recall exactly what he said at that time.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) Did Mr. Swartz tell you that he was going to talk to Vito on the telephone before he called him? A. He did not.

Q. How and when did you find out that Mr. Swartz had talked to or was talking to Vito?

A. Well, I walked up while he was talking to Vito on one occasion, the only one that I know anything about, and I heard him talking to Vito and trying to get him to come back to work.

Q. What did you say, or what did Mr. Swartz say? A. What did I say to Mr. Swartz?

Q. Or what did he say to you? [648]

A. Mr. Swartz said he had asked Vito to come

(Testimony of Sam Bothman.)

back to work. It seems to me that was the words. However, I ignored the proceeding completely, because I didn't feel he had any business doing that, and I just walked away from the situation entirely. I didn't discuss it with him at all.

Q. All right. Now, has Mr. Swartz at any time had the authority to hire or fire employees?

A. He has not.

Mr. Nicoson: I object to that. It calls for a conclusion of this witness. The evidence is contrary to that, and he is attempting to impeach his own witness.

Mr. Shapiro: Whose evidence is contrary?

Mr. Nicoson: Mr. Swartz'.

Trial Examiner Erickson: Let the answer stand.

Mr. Shapiro: Mr. Swartz never testified he had authority to hire and fire.

Trial Examiner Erickson: The record will speak.

Mr. Shapiro: May I have the question and the answer read, please?

(The question and answer were read.)

Q. (By Mr. Shapiro) To your knowledge, has Mr. Swartz ever discharged or fired an employee?

A. Not that I know of.

Q. Has Mr. Swartz ever hired an employee, without first obtaining your permission? [649]

A. I don't think so. Not that I know of.

Q. How many production employees were there on your payroll on July 23, 1941, the day before the strike?

A. What is the date?

Q. July 23, 1941.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Are we going into exact figures now, or estimates like you did yesterday?

Mr. Shapiro: No, exact figures.

Trial Examiner Erickson: All right.

Mr. Shapiro: We have a synopsis here.

Mr. Nicoson: Then I object.

Trial Examiner Erickson: Go ahead. I would like to have it.

Mr. Nicoson: I insist on the payroll being the best evidence.

Trial Examiner Erickson: I would rather have him tell it than have to count them.

Q. (By Mr. Shapiro) Will you answer the question, please? A. What was the question?

Mr. Shapiro: Will you read the question?

(The record was read.)

Mr. Nicoson: I will ask him this question: You have got a paper there in front of you, haven't you?

The Witness: Yes, sir.

Mr. Nicoson: What do you propose to do with it? [650]

The Witness: It has the number of employees—

Mr. Nicoson: What do you propose to do with it? Testify from it?

Mr. Shapiro: I will stipulate with you that he proposes to look at it unless the Court tells him not to.

Mr. Nicoson: Let's let the witness do the answering of the questions, will you, please?

(Testimony of Sam Bothman.)

Mr. Shapiro: If the Court tells me to stop making objections, I will stop.

Mr. Nicoson: You are not making objections. You are instructing the witness.

May I have an answer, Mr. Examiner, please?

Trial Examiner Erickson: There is a question pending.

The Witness: What is the question?

Trial Examiner Erickson: What do you propose to do with the paper, is the question?

The Witness: I propose to refer to this, so that I will give a fairly accurate answer as to the number of production employees that we had on the particular dates that are written on this particular paper.

Mr. Nicoson: What do you mean "fairly accurate"?

The Witness: Because I did not copy it myself. It was done by a girl in the office, so I can't tell you whether this is accurate or is not accurate. It is supposed to be taken from the payroll. [651]

Mr. Nicoson: I object to the use of it, to the witness refreshing his recollection from this piece of paper.

Trial Examiner Erickson: Use the payroll then.

Mr. Shapiro: All right. Use the payroll. I think this would have been a short cut.

Trial Examiner Erickson: Well, I think so too. I will overrule the objection for the present time. Go ahead. If it is wrong, I can find out. I have the payroll.

(Testimony of Sam Bothman.)

Mr. Shapiro: All right.

Q. (By Mr. Shapiro) Now, look at that document you have in front of you, and tell me how many production employees did you have in your factory on July 23, 1941?

Mr. Nicoson: Objected to until he explains what production employees are.

Q. (By Mr. Shapiro) All right. Then will you do this: Will you name the number of the employees in each particular classification that you are using in arriving at the total? Go right across the page and give us the numbers.

A. Assorters, four; cutters, ten; drapers, eight; time workers, 30; finishers, eight; operators, 32; pressers, five; sample makers, ten; designers, three.

Trial Examiner Erickson: What was that date?

The Witness: This is July 25th. This is the pay day of July 25th.

Trial Examiner Erickson: All right. [652]

Q. (By Mr. Shapiro) That would include July 23rd, would it?

A. This is the pay for the week ending July 25th.

Q. All right. Now, what is the total of those particular departments, the total of the number of employees in those particular departments on that date?

A. 106. That is unless I have made a mistake in my addition.

Q. Add it again and make sure you are right.

(Testimony of Sam Bothman.)

A. I get 110 this next time.

Q. The third time is the charm.

A. All right. 110.

Q. How many employees went out on strike on July 24th? A. On July 24th——

Mr. Sokol: That is calling for the conclusion of the witness as to whether or not they went out on strike. How many workers were not there?

Mr. Shapiro: I will ask it that way.

Trial Examiner Erickson: He may answer it then, with that modification.

The Witness: I didn't get that question.

Q (By Mr. Shapiro) The question is: How many of your employees——

Trial Examiner Erickson: Did not return to work?

Mr. Sokol: That is it.

Q (By Mr. Shapiro) ——did not return to work on July 24th? A. On July 24th? [653]

Q. The day of the strike.

A. Well, I can't answer that exactly from this record.

Q. Well, I know you can't, but do you know how many of your employees did not come back to work the day of the strike?

A. The day of the strike?

Q. Yes.

A. I think there were about 20 that did not come in to work; 19 to 20, something like that.

Q. Out of your total payroll of production employees of 110? A. That's right.

(Testimony of Sam Bothman.)

Q. How many of those 19 or 20 were cutters?

Trial Examiner Erickson: Are you using the term as descriptive of the classification on the payroll or as a craft designation?

Mr. Shapiro: I am using the term as descriptive of the classification on the payroll.

Trial Examiner Erickson: All right. Go ahead.

Q. (By Mr. Shapiro) How many cutters went out?

A. You mean how many cutters were working that morning? Is that what you mean?

Mr. Nicoson: That isn't what he said.

Mr. Shapiro: I will withdraw the question.

Q. (By Mr. Shapiro) How many cutters went out when the strike was called and did not come back to work to the [654] factory? A. Six.

Q. Are those the six who are named in the complaint in this action? A. They are.

Q. Then the difference between six and the 19 or 20 walked out of other departments in your factory; is that correct? A. That's right.

Mr. Sokol: That is not—

Trial Examiner Erickson: Well, didn't return to work is what you mean?

Mr. Shapiro: Yes, did not return to work.

The Witness: That's right.

Q. (By Mr. Shapiro) They came from other departments in your factory other than the cutting department? A. Correct.

Q. Now, you testified on your examination when

(Testimony of Sam Bothman.)

Mr. Sokol called you that you hired guards during the strike? A. I did.

Q. Why did you hire guards?

A. To bring the people in and out of the building so they wouldn't be molested.

Q. Well, what happened, if anything, that made it necessary for you to hire guards?

Mr. Sokol: That is objected to. [655]

Mr. Nicoson: I object to that.

Trial Examiner Erickson: It is overruled.

The Witness: Because there were crowds of people downstairs and in front of the building, and the people were a little scared to come in, so rather than have our employees go through the heckling that was downstairs, why, we had the guards drive them in the garage in the morning, and take them out in the evening. Some of the girls were a little afraid, they said that they had had threats.

Mr. Nicoson: I object to what the girls said.

Trial Examiner Erickson: Are you contending there was violence in the strike?

That will be stricken.

Mr. Shapiro: Yes, there was violence.

Trial Examiner Erickson: Are you contending that as a defense for not reinstating?

Mr. Shapiro: No, your Honor, but the matter was gone into by Mr. Sokol, and that was the reason I was going into it.

Trial Examiner Erickson: Yes, proceed. All right. I was just trying to get your contentions.

Q. (By Mr. Shapiro) Do you know how many

(Testimony of Sam Bothman.)

manufacturers of ladies dresses there are in the city of Los Angeles?

A. I can't give it to you exactly, but I think there are somewheres between 75 and 125; between that number, I would [656] say.

Mr. Nicoson: 75 and 125?

The Witness: Yes, between 75 and 125. I could not make a more accurate guess. I don't know.

Mr. Shapiro: I believe that is all.

Trial Examiner Erickson: We will recess for ten minutes.

(A short recess was taken.)

Trial Examiner Erickson: The proceeding will come to order.

Mr. Shapiro: I assume you want to wait for Mr. Nicoson?

Mr. Ryan: Yes.

Mr. Shapiro: I will be glad to state on the record that I would request the Court that, if we adjourn at 12:30, to reconvene at 2:00 o'clock today instead of the customary 1:30.

Trial Examiner Erickson: We will see what happens.

Mr. Shapiro: I have just one further question of Mr. Bothman.

Q. (By Mr. Shapiro) Mr. Bothman, you were in the court room when Mr. Wishnak, representative of the union, testified? A. Yes.

Q. You heard him testify as to the standing or position in the industry of a cutter, particularly, the historical background? A. I did. [657]

(Testimony of Sam Bothman.)

Q. Do you have any knowledge or information on the history of cutters in the ladies garment manufacturing industry?

A. By that do you mean, have I had any experience?

Q. Do you know what the history of the cutter has been, the development, the importance of the cutter, say, 15 or 20 years ago and today?

Mr. Sokol: He has already testified.

The Witness: I can tell you the importance of a cutter, as of my experience for the past 15 years.

Q. (By Mr. Shapiro) All right. Will you tell the Court that, please?

A. About—well, I don't remember the exact dates—we will say approximately 14 or 15 years ago, I decided to go into the manufacturing business, and that is when I first came in contact with the production end of dresses, in general. And it was always assumed that the cutting job was a very, very responsible job until they learned new methods of operation.

Mr. Nicoson: I object to this repetition. He testified to all this yesterday at great length. Why burden the record with a repetition of it?

Mr. Shapiro: I am not going to ask very many questions.

Trial Examiner Erickson: I think it is very important. Let him answer it again.

Q. (By Mr. Shapiro) Now, will you state those new methods, [658] and just what the situation is today that distinguishes the position or the im-

(Testimony of Sam Bothman.)

portance of the cutter from the position that he held 15 or 20 years ago?

Mr. Ryan: We object to the question on the ground it assumes a conclusion of fact, that it is different now than it was then.

Trial Examiner Erickson: Then let's ask the question first: Is it different than it was?

Q. (By Mr. Shapiro) Is it different today than it was 15 or 20 years ago?

A. The manipulation in the cutting section and cutting department in Los Angeles today is much more efficiently run and handled than it was in the industry as I saw it 15 years ago.

Mr. Nicoson: I object to that and move to strike it as not responsive.

Trial Examiner Erickson: That will be stricken.

Mr. Sokol: That answer was stricken. Let's read the question.

Mr. Nicoson: I object to the question.

Mr. Shapiro: Let's get the question.

Trial Examiner Erickson: The answer will be stricken. What is the question? Read it, please.

(The question was read.)

Mr. Shapiro: I think that what the Court wants—— [659]

Mr. Nicoson: Wait.

Trial Examiner Erickson: Let him answer the question.

Mr. Shapiro: All right. I am sorry.

The Witness: For instance, to my knowledge,

(Testimony of Sam Bothman.)

15 years ago a carbon marker was never heard of in the cutting industry. In other words, a cutter got the pattern, he graded the pattern on paper as to size from 10's to 20's, and completed the complete operation of cutting findings, trimmings and everything.

In recent years we have found in the industry that we could improve the efficiency of cutting by adopting different methods. So, therefore, in our particular plant we have tried to get as much production out of our cutting room for as little number of hours as we possibly could. We found that by having one particular man grade the patterns—when I say “grade the patterns”, I mean take the first pattern that comes from the sample room and then grade up all the sizes on paper; therefore, eliminating the responsibility of each individual cutter grading his sizes on paper.

Now, when a cutter was not forced to grade on paper, his responsibility and his knowledge did not have to be as great as one that had a knowledge of grading, because it is generally——

Mr. Sokol: I submit that this is all the opinion of this witness. [660]

Mr. Shapiro: Well, Mr. Wishnak gave his opinions.

Mr. Nicoson: It is certainly a repetition of what he said the other day, almost word for word.

Trial Examiner Erickson: All right. Let him answer it again. I am very interested.

(Testimony of Sam Bothman.)

The Witness: May I have the last part of that answer, please?

(The portion of the answer referred to was read.)

The Witness (Continuing): ——conceded that the most important part of the making of a dress is the accurate grading, because if he allows a quarter of an inch on a shoulder where he should have allowed a quarter of an inch on the hips, the entire garment will come out lopsided. [661]

Q. Now, how many——

A. Pardon me, Mr. Shapiro. I am not quite through.

Q. Pardon me. Go ahead.

A. Therefore, in our program of making our cutting department more efficient, we designated one particular man to do this grading, and instead of grading on the paper, the soft paper, as formerly the cutters did, or on the cloth itself, they take a stiff paper, and he took a stiff paper—I will use that in the singular form, because we designated one person who did it—to do all the grading.

Q. Who is that?

A. In our particular place it was Mr. Swartz.

Q. All right.

A. So that all the grading would be accurate, this one man handled it, and he was responsible from then on for the grading of all garments, because we had a separate piece of paper for a size 10, a 12, a 14, a 16, an 18 and a 20, so that the cutters

(Testimony of Sam Bothman.)

would not have to grade the individual dresses.

Now, another reason for having it handled in that manner is because, when a man is grading on paper, he can never be as accurate as one can who is doing group grading on stiff paper, and has his mind definitely set on the particular grading; because sometimes a dress should be graded in one place for one style, and on another style the grading will [662] have to be handled entirely different.

So, therefore, a man that is considered a good grader in our industry also has knowledge of making a dress, and also knowledge of design and proportion.

So in former years a cutter with ten and twelve and fifteen years experience, that is so often spoken of in the cutting department, had experience through the entire manipulation, from the designing until the cutting of the cloth. In order for one person to be efficient in that manner, it really takes ten to fifteen or eighteen years, when you take grading, proper grading, into consideration. But we developed the system by which one man with the proper experience could handle that responsible position and make a mould, in other words, for all the rest of the factory to be guided from; so that that graded mould is from which we work.

Now, by doing that we eliminated a lot of mistakes, because a cutter would say that he had experience and that he was a good grader, and when

(Testimony of Sam Bothman.)

he would get ahold of a pattern and he would look at the dress, why, he would think that it should be graded under the arm hole, and at the shoulder, and it would be graded up on paper that way, and the dress would come out wrong. So due to the fact that we had a lot of trouble, we worked out a system, the system that I have just referred to, by having one standard grader handle the entire situation. [663]

Now, I know that that was—well, I wouldn't say I know that we were the first to adopt that system, but I know that we are one of the first that started along that one system of grading up individual patterns that is used in our place.

Trial Examiner Erickson: May I interrupt right here?

The Witness: Yes.

Trial Examiner Erickson: Does that particular fact of putting the responsibility on one person take away from the person who is known as the cutter any of his qualifications or abilities to do that same work in case he is called on to do it?

The Witness: It doesn't take that away, no.

Trial Examiner Erickson: Well, if you hire a man that is a cutter, is he expected to be able to do that?

Mr. Shapiro: You mean in the Lettie Lee plant?

Trial Examiner Erickson: In Lettie Lee, yes.

The Witness: Is he expected to be a grader?

Trial Examiner Erickson: Is he expected to be able to do what you have just described?

(Testimony of Sam Bothman.)

The Witness: No.

Trial Examiner Erickson: Do you know whether he is able to do it?

The Witness: We weren't particularly interested, so, therefore, I can't tell you whether he was able to do it or [664] not.

Trial Examiner Erickson: All right.

Mr. Sokol: May I ask a question there?

Trial Examiner Erickson: Yes.

Mr. Sokol: Mr. Swartz was the one that did the grading?

The Witness: He did practically all the grading.

Mr. Sokol: Yes.

The Witness: Miss Eunice Usher assisted him in some of the grading.

Mr. Sokol: Well, when Mr. Swartz was absent, who did it?

The Witness: I don't recall of anybody doing it while Mr. Swartz was absent, unless it was Miss Usher, who assisted him. She might have helped him. Mr. Swartz did the greatest percentage of all of the grading down in our place, and even Mr. Swartz at times had to consult with the designers to be positive of the correctness of certain types of grading in our place.

Trial Examiner Erickson: Is there any one of the six persons involved in this hearing who is unable to grade?

The Witness: I can't answer that question for you.

(Testimony of Sam Bothman.)

Mr. Sokol: Are you asking me?

Trial Examiner Erickson: No, I am asking the witness.

The Witness: They weren't hired for that purpose at [665] Lettie Lee, so I couldn't answer that question for you.

Trial Examiner Erickson: All right. Proceed.

Q. (By Mr. Shapiro) In the old days, speaking of ten or fifteen years ago, did a cutter also do the work of assorting, as a part of his job as a cutter?

A. Yes. In our first factory they did all their own assorting, all their trimming, cutting, and marking, and everything, and sent the merchandise out complete ready to go into the factory.

Now, in our operations, in our new methods, we try to figure it out; in fact, we did figure it out because, of course, necessity is the mother of all inventions, and we had to compete with the New York market.

Mr. Sokol: Now, what is this?

Mr. Shapiro: That is a classical reference that he is giving you.

Mr. Sokol: What are we getting off to? Is he up there for the rest of the day, to go on and on? Where are we now? What is the question?

Trial Examiner Erickson: Are you making the same objection you made yesterday?

Mr. Sokol: Well, I don't know what he is up to. Now, I mean, what line is he going to now?

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Would you read the last question, Mrs. Zellner, please? [666]

(The question was read.)

Trial Examiner Erickson: Do you have the question now, Mr. Sokol?

Mr. Sokol: Just so the witness has the question.

Trial Examiner Erickson: Yes. Proceed.

Mr. Shapiro: Will you please read the answer?

(The answer was read.)

Q. (By Mr. Shapiro) All right. Is the system different today than the system that you referred to as being in vogue ten or fifteen years ago?

A. The system we are using at the present time and have used for the last three years at Lettie Lee is different from that system.

Q. In what respect?

A. In the respect that each individual person has his own particular line of work to do, and no one person in our factory makes a complete garment. It is more or less an assembly line.

For instance, the cutter gets—the head grader gets the first design, he grades up the pattern completely, and then the next operation it goes to is the marker, who makes the carbon markers, which I showed you previously here in the courtroom.

We found that in doing it in that manner the question of whether the knowledge of one par-

(Testimony of Sam Bothman.)

ticular cutter was good enough [667] to make a marker close enough to save material was never a question any more in our factory, because we made our master markers, and they decided the complete question as to the material. I did not have to go over to a cutting table and stand beside a cutter and measure the amount of material that it would take to cut a dress, because my master marker was made, and all I had to do was to check the original first marker. Then I had a set quota to go by, because the responsibility was definitely on the marker. And that was the only thing that I checked, to find out whether or not this particular marker could be laid closely.

I stated—I think I stated that the reason for cutters taking such a long time years ago to make markers was because when they were working on high priced silk materials, and the hour's wage was less, that it paid the concern to have them work out and save a certain amount of yardage.

Trial Examiner Erickson: Let's try to avoid this repetition.

Mr. Shapiro: That is repetition.

Mr. Nicoson: He is repeating exactly, almost word for word, what he said yesterday.

Trial Examiner Erickson: Yes, there is quite a bit of repetition.

Mr. Shapiro: I have no further questions.

Trial Examiner Erickson: All right. There are no [668] further questions. You may cross-examine.

(Testimony of Sam Bothman.)

Mr. Nicoson: I still want to put my objection on the record.

Trial Examiner Erickson: It is on the record.

Cross Examination

Q. (By Mr. Nicoson) Were you ever a cutter?

A. Sir?

Q. Were you ever a cutter?

A. Was I ever a cutter?

Q. That's what I said. A. No.

Q. You never operated a table in your life?

A. That's right.

Q. The only thing you know about it is what someone has told you; is that correct?

A. No, sir.

Q. Well, how did you find it out?

A. Because I am with the cutters, and I have been associated with the entire manipulation of the dress manufacturing business for the last fourteen years or fifteen years.

Q. Now, which is it, fourteen or fifteen?

A. Between that time. I don't recall the exact time.

Q. I thought you testified here, on one of your trips to the stand, that you were mainly interested in the sales end of the business. [669]

Mr. Shapiro: That is objected to as being not a correct statement of the evidence, Your Honor.

Mr. Nicoson: Well, I will ask him.

Trial Examiner Erickson: Let him so state. You may answer.

(Testimony of Sam Bothman.)

The Witness: May I have the question?

Mr. Nicoson: Read the question.

(The question was read.)

The Witness: In the sales and productive end, that's right.

Q. That is right?

A. Sales and production, and general managing.

Q. I think you testified, did you not, that at some stages of your experience you were entirely engaged in sales work?

A. That's right, but not with Lettie Lee, Inc. I had my experience in the cutting end of it years and years and years ago. I manipulated and ran a factory where I employed 30 cutters at one time right here in the City of Los Angeles. My experience has not only been limited to the Lettie Lee concern.

My productive experiences are wide and considered rather extensive from the fact that I was able to produce and ship and sell out of the City of Los Angeles as many as 200,000 dresses a year.

Q. Very laudible. But how much of your time has been spent [670] in sales work?

A. In sales work?

Q. Yes.

A. There has been more time spent in the past five or six years in sales work than it was previously to the last five or six years.

Q. That is right. How much of your time in

(Testimony of Sam Bothman.)

the last five or six years have you devoted to sales work?

A. Well, it is very problematical, it is very hard for me to answer that question for you.

Q. I understand that. Give us your best recollection.

A. Well, there were periods that sometimes I would be out on the road for a couple, three months. Then there were periods that I would sell in the show room and they would call me out from the back of the factory. I mean in the last three years, since 1939, I have been in the factory of Lettie Lee, Inc., at least 90 percent of the time.

Q. So that when you said a moment ago, if I so understood you, that the biggest portion of your time in the last five years was devoted to sales work, that wasn't true? A. Sir?

Q. Read the question, please.

(The question was read.)

A. I don't recall making that statement.

Q. Well, if you did make it, it wasn't true, was it? [671] A. That's right.

Mr. Shapiro: Now, I don't like to have this record carry the inference that the man has made statements that aren't true, and if there is any confusion as to what he said, I think it should be explained.

Mr. Nicoson: The record will show it.

Mr. Shapiro: I will ask Mr. Bothman what his

(Testimony of Sam Bothman.)

answer is, Your Honor, so there is no guesswork about it.

Trial Examiner Erickson: Mr. Nicoson is speaking of what is in the record. Proceed.

Mr. Nicoson: The answer is in the record.

Mr. Shapiro: I think we are splitting hairs anyway.

Q. (By Mr. Nicoson) Now, Mr. Bothman, on August 13th you had a conversation with Mr. Sargent of this office, didn't you, in 1941?

A. August 13th?

Q. Yes.

A. I don't recall the exact date. I did have a conversation with Mr. Sargent, but I don't recall the exact date.

Q. Well, would you say it was not that date?

A. No, I wouldn't say the exact date, because I don't recall the exact date, no. I did have a conversation after I received a letter from Mr. Walsh. I had a telephone conversation first, I think, with Mr. Sargent.

Q. With Mr. Sargent. That was about a week or so after [672] you got your letter from Mr. Walsh; is that correct?

A. I don't recall the exact dates. It was along in that period of time, yes.

Q. Along in the fore part of August, wasn't it?

A. Yes.

Q. And you talked to Mr. Sargent about the charge that had been filed against you by the Union, didn't you?

A. That's right.

(Testimony of Sam Bothman.)

Q. You had——

A. (Continuing) I don't know exactly what our conversation was the first time I called him. It seemed to me like I called him on the phone, and he told me to answer the questions, I think, that was in a letter that was sent to us.

Q. You hadn't gotten that letter yet, had you?

A. I mean, I don't recall that experience exactly there.

Q. That is right. You first had a telephone conversation with Mr. Sargent, and then Mr. Sargent sent you a letter? Isn't that the way it was?

A. It seems like that could have been. I can't recall.

Q. And that is the letter that is in evidence here as Respondent's Exhibit 2, which I will show you? I am correct in that, am I not?

(Handing document to witness.)

A. Yes, that is correct.

Q. And the date of that letter is August 13, 1941, isn't it? [673]

A. That's right.

Q. That's right. Now, at that time you had a conversation with Mr. Sargent concerning the unit, didn't you?

A. It seems to me like he told me that—let's see—I can't recall the exact conversation that I had with Mr. Sargent, whether it was before this letter. I was in his office. I was in his office——

Q. That was the second conversation you had with Mr. Sargent, wasn't it?

(Testimony of Sam Bothman.)

A. The one that I was in the office?

Q. In the office. The first one was a telephone call?

A. Phone call, that's right.

Q. And you had a conversation with Mr. Sargent about the unit? Am I right in that?

A. On the telephone, you mean?

Q. Let me help you: In which you stated that the entire plant was the appropriate unit?

A. Well, I don't recall whether that was on the telephone in the first conversation or not. I don't recall it. I know I spoke to him with reference to that matter, and whether it was in his office or on the telephone call, I don't recall.

Q. Let me show you Respondent's Exhibit 2 again, and I will ask you if that exhibit doesn't show that it is in confirmation of the telephone conversation with you on that date.

A. Yes, this does. [674]

Q. And it sets out there——

A. That's right.

Q. ——the subject of your telephone conversation?

A. That's right. So I must have talked to him in reference to this matter.

Q. Then you had talked to him in reference to the cutters?

A. That's right.

Q. And you told Mr. Sargent you thought the entire plant was the appropriate unit?

A. That's right.

Q. And you also told Mr. Sargent that there

(Testimony of Sam Bothman.)

were eight cutters in the claimed unit at that time, six or seven of whom were on strike, didn't you?

A. I don't recall exactly what I told him at that time.

Q. Mr. Sargent in Respondent's Exhibit 2 so states, doesn't he, in confirmation of your telephone conversation?

Mr. Shapiro: I submit that the letter is the best evidence of its contents, Your Honor.

Mr. Nicoson: He has it before him.

Trial Examiner Erickson: Yes, he has it before him.

Q. (By Mr. Nicoson) Isn't that true?

A. Well, it says here in the letter. I don't recall telling Mr. Sargent on the telephone conversation at that time that we had seven or eight cutters in the cutting room.

Q. Do you recall not telling him that? [675]

A. No.

Q. When this letter was introduced in evidence yesterday, you testified that you did receive this letter? Am I correct in that?

A. That's right.

Q. And that you immediately answered it? Am I correct in that?

A. I don't think that I testified that I immediately answered this letter.

Trial Examiner Erickson: I made a particular note of that. You said you immediately answered.

Mr. Nicoson: I did too.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Yes. I had in mind there the August and September dates of the original and the answer.

Q. (By Mr. Nicoson) But, as a matter of fact, you didn't answer Mr. Sargent's letter until September 11th, at which time you wrote what is in evidence as Respondent's Exhibit 3? Isn't that correct? I show you Respondent's Exhibit 3.

(Handing document to witness.)

A. Now, let me answer you.

Q. You answer my question, please.

A. Well, I am trying to.

Q. All right.

A. I know between these two intervals that I answered Mr. Sargent immediately, either by telephone or by mail. Now, I [676] answered Mr. Sargent, I think on the telephone, the next day or two after I received this letter, and I am not sure, it might have been the same day I called him on the phone.

Q. Are you sure of that?

A. I am positive I called him on the telephone, yes.

Q. You are very positive?

A. I think Mr. Sargent will verify that, if you call him to the courtroom.

Q. Then why did you write this letter?

A. Which letter?

Q. Showing you Respondent's Exhibit 3.

A. Because Mr. Sargent asked me to write this letter.

(Testimony of Sam Bothman.)

Q. And why did you wait a month to do it?

A. Because I walked over to Mr. Sargent's office and wanted a conference with him a couple of times, which I had, and one time he was unable to see me until a week later, he was either on his vacation or there was some reason why I couldn't see him. I took this up with Mr. Sargent two or three times, and I think if you will check with Mr. Sargent, he will verify that.

Q. Because of your inability to reach Mr. Sargent you delayed more than a month in putting in—

A. I did not delay.

Q. Well, didn't you? Isn't that the date here, August 13th and September 11th here? Am I right in that, sir? [677]

A. Just a moment.

Q. Am I right in that, sir? Answer me "yes" or "no."

A. I would like to have the full question first, before I can answer you under that.

Mr. Nicoson: Read the question, please.

(The question referred to was read as follows: "Q. Because of your inability to reach Mr. Sargent you delayed more than a month in putting in—")

Mr. Nicoson: I think I said "the substance of your conversation"?

Trial Examiner Erickson: No, you didn't, but you may put it in your question now.

The Witness: No. I had several conversations with Mr. Sargent. I called him on the phone, and

(Testimony of Sam Bothman.)

I think I asked permission as to whether or not he could see me at a certain time. I don't remember the exact date. I think he will recall some of the conversations, if you will call him on the stand, and I am sure that I told him that I would answer that letter after I got over and had a chance to talk to him. It seems to me that was a part of our conversation. However, I am not positive. It may be as fresh in Mr. Sargent's recollection as it is in mine.

Q. (By Mr. Nicoson) Isn't it a fact, Mr. Bothman, that you didn't answer Mr. Sargent's letter until you had received Mr. Sokol's letters demanding reinstatement of the six cutters [678] and demanding bargaining with the Union?

A. I don't think so.

Q. Let me show you Mr. Sokol's letters.

Mr. Shapiro: I submit that the letters show the dates upon which each letter was written, and the conclusions can be drawn by the Examiner.

Q. (By Mr. Nicoson) I show you what is in evidence as Board's Exhibit 8, and which I think you said you had received.

(Showing document to witness.)

Mr. Shapiro: What is the date of that, Mr. Nicoson?

Q. (By Mr. Nicoson) And that is dated September 9, 1941, isn't it? A. That's right.

Q. That is right. Thank you, sir.

So after having these conversations with Mr.

(Testimony of Sam Bothman.)

Sargent and having received Mr. Sokol's letter, you then concluded to write this letter which is Respondent's Exhibit 3?

A. After I—after conversing with Mr. Sargent, going over and talking to him either one or two times in his office, and maybe one or two times over the telephone, I asked exactly what was required of me from the National Relations Board, and in accordance with our conversations I answered the questions as this letter states.

Mr. Nicoson: I move to strike the answer as not [679] responsive.

Trial Examiner Erickson: Let it stand.

Mr. Nicoson: I beg your pardon?

Trial Examiner Erickson: It will stand.

Mr. Nicoson: May I have the answer read so that I can find out just what he said?

Trial Examiner Erickson: All right. You may.
(The answer was read.)

Mr. Nicoson: Now, may I have the question?
(The question was read.)

Mr. Nicoson: I submit that isn't responsive.

Trial Examiner Erickson: I have ruled.

Q. (By Mr. Nicoson) Now, about the time that the letter was written which is in evidence as Respondent's Exhibit 3, you had a conversation with Mr. Sargent, didn't you?

A. Repeat that question, please.
(The question was read.)

(Testimony of Sam Bothman.)

A. It might have been previous to that time. I am not sure.

Q. Well, you did have about that time?

A. I had conversations along in that entire period with Mr. Sargent, but I don't recall the exact dates.

Q. You told Mr. Sargent that the Union only represented seven of the cutters, didn't you?

A. Sir? [680]

Mr. Nicoson: Read the question, please.

(The question was read.)

A. No. As I recall, our conversation—in my conversation with Mr. Sargent I told him the same contents that is in that letter that I wrote to him.

Q. (By Mr. Nicoson) Well, would you say you didn't tell Mr. Sargent that the Union only represented seven cutters?

A. I would have—if I would have made a statement of that type, I would probably have said they only represented six cutters.

Q. Would you say you didn't?

A. I don't recall.

Q. You don't know whether you did or not?

A. I don't recall, no, sir.

Q. You could have made that statement?

A. It doesn't seem very logical that I might have made that kind of statement and write a different kind of a letter.

Q. Could you have made that statement?

A. I don't think that I could have.

(Testimony of Sam Bothman.)

Q. It is impossible for you to have made that statement, is it?

A. No, it is not impossible for me to make any statement.

Q. Then you don't know whether you made it or not? A. That's right. [681]

Q. Thank you. Now, at the time you wrote that letter which is Respondent's Exhibit 3, Kathryn Lembke wasn't working in your plant, was she?

A. She was on a leave of absence.

Q. Will you please answer the question?

A. Sir?

Q. Read the question, please.

(The question was read.)

A. No.

Q. Mr. Thain wasn't working in your plant, was he?

A. No, he was also on a leave of absence.

Q. I understand that to be your testimony. Now, when Mr. Thain left, as you say, he told you he was in ill health; is that right? A. That's right.

Q. And you said, "All right, go ahead and take a leave of absence, and build yourself up," or something like that; is that right?

A. No. I told him to go ahead and stay as long as he wanted to stay, and whenever he would come back, I would give him back his job, as he was one of the oldest cutters we had on the place, and besides, the brother to the president of the corporation, that we felt like we would extend him that

(Testimony of Sam Bothman.)

courtesy of giving him back his job when he come back to it. [682]

Q. You didn't know whether he would ever come back, did you?

A. I had an idea he would be back within the year.

Q. But you didn't know? A. No, sir.

Q. You dropped him from the payroll?

A. Like we drop everybody else that doesn't work. If they don't work, certainly, we drop them from the payroll. Nobody is paid except on the hour in our place, except the week workers.

Q. Then why didn't you drop Kathryn Lembke; if that is your practice?

A. She was dropped during the payroll as far as being paid is concerned.

Q. Her name showed on the payroll, didn't it?

A. For that quarter. As I stated in my previous testimony, in reference to the Social Security Tax, I notice that all of the names were carried through on that payroll up and through that quarter period.

Q. And the succeeding period too? Am I right about that?

A. I am not sure about that. I think they carried them through for the quarter period. Then if the particular person doesn't appear on the payroll, they add it on later on. So I am not sure about that. [683]

Q. Do you have to make a report to the Social Security Board as to any persons carried on your payroll?

(Testimony of Sam Bothman.)

A. No, but it is very convenient for the girl, when she handles her payroll, to take those names in a row like that, because it is quite a little job to make out those Social Security reports.

Q. But do you make quarterly reports to the Social Security Board—

A. That's right.

Q. —of the number of people on your payroll?

A. Individually?

Q. And their names too, sir?

A. Yes, and they have to be classified and numbered.

Q. And if their names are not on the payroll, you don't make a report, do you, sir?

A. That's right.

Q. That is right. Thank you, sir. Now, didn't you tell Mr. Sargent that you had refused to talk to Mr. Sokol about bargaining with his Union?

A. I don't recall exactly that I told him that. I probably might have told him that.

Q. Well, you are not sure about it?

A. That's right.

Q. You could have told him that?

A. I could have told him that, yes. [684]

Q. But that was your opinion, was it not?

A. Sir?

Mr. Nicoson: Read the question, please.

(The question was read.)

The Witness: What is my opinion, is what I want to know.

Trial Examiner Erickson: You mean you don't understand the question?

(Testimony of Sam Bothman.)

The Witness: I don't understand the question.

Trial Examiner Erickson: All right. Give him a question he understands.

Mr. Nicoson: Let's have the preceding question and the answer read, then, please.

(The question was read.)

The Witness: It was my opinion of what is what I want to know.

Q. Well, you didn't talk to Mr. Sokol about bargaining with his Union, did you?

A. I did not.

Q. And you told that to Mr. Sargent, didn't you?

A. That I hadn't conversed with—I don't recall that I did.

Q. You don't recall?

A. Whether I did or not, no.

Q. Well, did you ever talk to anybody from the Union about [685] this?

A. Authorized agents of the A. F. of L.?

Q. Anybody connected with the I. L. G. W. U., even if it is only the janitor down in their office building? Did you ever talk to anybody about it?

A. Even if it is just the janitor?

Q. Even just the janitor. I don't care.

A. A member?

Q. Anybody that has any connection at all with the I. L. G. W. U. A. I talked to Vito.

Q. You talked to Vito? A. Yes.

Q. About not bargaining with his Union?

A. No, sir.

(Testimony of Sam Bothman.)

Q. That is what we are talking about now. Now, I will again ask you if you have talked to anyone in any way, shape or form, connected with the I. L. G. W. U., about bargaining. A. No, sir.

Q. Nor about the unit, have you, sir?

A. No, sir.

Q. I believe the evidence shows, Mr. Bothman, that male cutters, or those shown on your payroll as male cutters, receive a basic wage of \$45.08 a week. Am I correct in [686] that? A. Correct.

Q. And that Eunice Usher, Dorothy Richard and Kathryn Lembke receive \$24 a week?

A. I am not sure exactly as to the amounts. Approximately correct, I believe.

Q. The payroll will show the correct amount, in that neighborhood, will it not?

A. That's right.

Q. Why is it that you have such a marked differential between the male cutters and these three ladies that I have just mentioned, in pay?

A. Because it is customary in the industry that that has been the truth for a number of years. The exact reason for that I can't tell you. However, if you will make a survey of the industry, you will find that the women cutters do receive a much lower wage than the men cutters do.

Q. Do you always follow the custom of the industry, sir?

A. I am forced to, in order to compete with the selling price with my competitors.

Q. I thought you just got through a long, a

(Testimony of Sam Bothman.)

lengthy speech, telling how you had departed from the custom in order to increase your efficiency, so you could compete with the New York market.

A. That's right. [687]

Q. Am I possibly wrong about that?

A. You are absolutely correct.

Q. That you have pulled entirely away from the custom as it used to be, in order to modernize your business?

A. Improve it as much as we knew how, yes.

Q. And yet you haven't seen fit to modernize your pay scale; is that correct?

Mr. Shapiro: I am going to object to that. It isn't in issue what the ladies' cutters were paid, nor are they complainants in this proceeding.

Trial Examiner Erickson: This is a question of the practice.

Mr. Shapiro: And may I also say——

Trial Examiner Erickson: The objection is overruled.

Mr. Shapiro: May I also say this: That Mr. Bothman, to the best of my recollection, testified that they have modernized the production. He has not testified, that I can remember, that they swung away or didn't swing away from the rest of the industry in so far as the wage or pay scale is concerned. The one certainly has nothing to do with the other.

Trial Examiner Erickson: It may be important. I would like to know.

(Testimony of Sam Bothman.)

The Witness: Read the question.

(The question was read.) [688]

The Witness: It has been modernized to the point of where it is in direct competition with the practices of the Los Angeles industry.

Q. (By Mr. Nicoson) You have pretty stiff competition in Los Angeles, don't you?

A. I would say it is fair, yes.

Q. And you have pretty stiff competition in New York, don't you? A. Much stiffer.

Q. And in order to meet that large competition, you have to operate just as economically as possible?

A. Correct.

Q. Isn't it a matter of good business judgment to not pay \$45 a week for something you can buy for \$24, sir?

A. I would, generally speaking. I would say that would be true, yes.

Q. Why isn't it true in this case?

A. Because we were unable to secure men that would do their work efficiently, or other women, unless we paid the wages specified in the payroll.

Q. So you don't want to pay the women that way; is that correct? A. Sir?

Mr. Nicoson: Read the question, please.

(The question was read.) [689]

Mr. Shapiro: May I have a running objection to this entire line of questions?

Trial Examiner Erickson: You certainly may. It is overruled.

(Testimony of Sam Bothman.)

The Witness: I am willing to, if the rest of the industry does, yes.

Q. (By Mr. Nicoson) I am not talking about what you are willing to do. I am asking you about what you do do.

A. We don't at the present time, no.

Q. (By Mr. Nicoson) You would like the record to show and for the Board to believe that you are now paying \$45 a week for work you can get done for \$24; is that right? A. Correct.

Q. Didn't I understand you to testify the other day that the reason you didn't talk to Mr. Sokol was because you didn't think his Union had a majority of the employees in your plant?

A. That's right.

Q. You testified to that? A. That's right.

Q. You also testified, did you not, that you didn't know how many employees in your plant belonged to the Union? A. That's right.

Q. Well then, how do you know whether or not Mr. Sokol's Union represented a majority of your employees? [690]

A. Because over 80 per cent of them came in to work during the strike.

Q. That is the only way you have got to judge?

A. That is all I have got to go by, yes.

Q. And that is your only reason?

A. That's right.

Q. So far as you know, your entire plant may be members? A. I do not know.

Q. You do not know? A. That's right.

(Testimony of Sam Bothman.)

Q. The only persons you positively know belong to this Union are the six complainants in this case?

A. As far as I have had proof of it?

Q. Yes.

A. That's correct. And the proof is the cards that I have seen.

Q. That's right. Well, you don't have any other kind of proof, do you?

A. That is what I say, no.

Q. And you have——

A. (Continuing): That is the positive proof itself. The only positive proof that I know of is these six cards I have seen here on exhibit, and it seems to me like those particular cards were in Mr. Sargent's office the day that I was over there talking to him. Now, I am not sure if they are the [691] exact cards, but there were some red cards that were attached to a piece of paper that he had, either a complaint, or whatever it was that he had.

Q. Did he show you the cards?

A. I recall seeing some cards there, and I don't remember just exactly how they were gauged, or all the names that were on them.

Q. Now, tell me, if you will, please, sir, and kindly answer my question: Did Mr. Sargent show you the cards?

A. Yes, he did.

Q. And when did he show them to you?

A. When I was in his office.

Q. Just about the time you wrote the letter on September 11th,—correct?

(Testimony of Sam Bothman.)

A. I think it was before that, quite a little while before that, in my first visit.

Q. How long before?

A. My first visit.

Q. On your first visit?

A. I think on my first visit to his office, he showed me the cards.

Q. When was your first visit, please, sir?

A. I don't recall the exact date.

Q. Do you have any idea?

A. It was sometime after the letter that was written to me [692] by Mr. Walsh. It could have been a week, it could have been ten days after I received the letter from Mr. Walsh that I was in Mr. Sargent's office.

Q. And it could have been a month?

A. Well, no, it wasn't that long.

Q. As a matter of fact, Mr. Bothman, you weren't in this office in respect to this particular case until about September 11, 1941; isn't that right?

A. I don't think so. That is the reason I am trying to explain to you.

Q. And that all other contacts you had with Mr. Sargent were over the telephone? That is right too, isn't it?

A. I don't recall, as I told you before, whether I made two trips up here, or whether I had two or three telephone conversations with Mr. Sargent or not. I don't recall them exactly. I don't know whether Mr. Sargent made notations of the dates.

(Testimony of Sam Bothman.)

However, it was all during the course of that period that we are referring to that this happened.

Q. Well now, as a matter of fact, Mr. Bothman, it really wasn't a matter of unit at all, was it; it was a matter that you just wouldn't bargain with the Union under any circumstances; isn't that correct? A. It is definitely a unit.

Q. That is a plain fact; isn't it?

A. Certainly. Six people out of a factory of 110 certainly [693] don't represent a unit. It is not a representative body.

Trial Examiner Erickson: Will you read the last question and answer, please?

Mr. Nicoson: I am satisfied with it.

Trial Examiner Erickson: All right.

Mr. Shapiro: I may have missed something. May I have it read. I would like to have it read.

Trial Examiner Erickson: All right. Will you read the last question and answer, please?

(The question and answer were read.)

Trial Examiner Erickson: The question before that, too.

(The record was read.)

Mr. Shapiro: "A unit question."

Mr. Nicoson: She didn't say "question."

Mr. Shapiro: I am asking that. I am allowed to make a statement.

Mr. Nicoson: You are not allowed to dictate into the record.

Mr. Shapiro: I am not trying to.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: Go ahead, read it, please.

Mr. Shapiro: I would like to know what the answer is.

Trial Examiner Erickson: Well, when she is reading she gives the answer and then she says, "Question," and then she follows it with the question that was asked. [694]

Mr. Shapiro: I beg your pardon.

Mr. Sokol: The Trial Examiner is certainly not going to decide the issue on that.

Mr. Shapiro: I thought it might have something to do with the answer.

Trial Examiner Erickson: That word "question" is not in the answer of the witness. Read it again, please.

(The record was reread.)

Trial Examiner Erickson: All right. We will let it stand.

Mr. Shapiro: May the witness be allowed to explain the answer, if he cares to?

Mr. Nicoson: Wait a minute. What goes on here?

Mr. Sokol: Take him on redirect.

Trial Examiner Erickson: Go ahead. Proceed.

Mr. Shapiro: I am frank to state, your Honor, I have never been accorded less courteous treatment by any counsel in any case. I don't like to say that.

Mr. Nicoson: And I don't mind saying that I

(Testimony of Sam Bothman.)

have never been up against a counsel who has struggled more valiently to instruct a witness on the stand than Mr. Shapiro.

Trial Examiner Erickson: We will not have any more of that. Just go ahead with the examination.

Q. (By Mr. Nicoson): As I understand your testimony, sir, you stated that you did not offer Mr. Sardo, Mr. [695] Baliber or Mr. Castella reinstatement after the strike? A. That's right.

Q. That is correct. I now show you Respondent's Answer, which is in evidence as Board's Exhibit 1-J, and I will read to you Paragraph IX.

"Denies generally and specifically each and every of the allegations contained in paragraph 11."

I am sorry. I am reading from Paragraph XI. My Roman numerals aren't so good.

"Further answering the allegations of said paragraph, respondent alleges that it has requested its said employees to return to their work and has offered to reinstate the said employees to their former positions."

Now, that isn't true, is it?

A. It is, with the exception of these two boys.

Q: And to those three, it is not true, is it?

A. That's right.

Q. And you swore to this, didn't you, before a notary public? That is true, isn't it?

Mr. Shapiro: That is objected to.

Trial Examiner Erickson: Overruled.

(Testimony of Sam Bothman.)

The Witness: Yes.

Q. (By Mr. Nicoson): But that is your signature when you swore to that? (Indicating).

A. That is my signature, yes, sir. [696]

Q. And you didn't swear to the truth, did you?

Mr. Shapiro: That is certainly argumentative.

Trial Examiner Erickson: It may be, but I will overrule your objection.

The Witness: I won't say that that was wholly an untruth. No, I can't answer it that way, because I did ask these particular boys that I mentioned to come to work; and these other two, I did not request that they come back to work.

Q. The other three?

A. The other three, that's right.

Q. And then when you said in your answer that you had, that wasn't true? Am I right about that, please, sir? Yes or no?

A. I have to answer it——

Q. Please, sir, yes or no?

A. Wait a minute.

Q. Please, sir, yes or no?

Mr. Shapiro: Is the witness permitted to answer the question?

Mr. Nicoson: He is not permitted to evade it.

Trial Examiner Erickson: He is permitted to answer it, yes.

Mr. Nicoson: Will you please read the question?

(The record was read.) [697]

(Testimony of Sam Bothman.)

The Witness: Well, my intentions were to say——

Q. (By Mr. Nicoson): Please, sir, answer it yes or no, and then you can make such explanations, as you want to.

When you signed this statement, when you swore to it before a notary public that you had offered these employees, all of them, reinstatement, it was not true? Is that correct? Yes or no?

A. I did not know——

Q. Well, please answer——

A. That I was signing anything that was saying that I offered all of them.

Q. Please, sir,——

A. I am telling the truth.

Mr. Shapiro: I object.

Trial Examiner Erickson: I am going to let it stand, and I am going to let the reporter read what he has said, and let him go ahead. I think maybe we are going to get to the bottom of what happened the first day here. Proceed, now.

The Witness: What was that?

(The answer referred to was read.)

The Witness: I also did not know that I was signing anything that I was offering anybody any employment that I did not need in our employment.

Q. (By Mr. Nicoson): Then why didn't you say so in your sworn answer? [698]

A. Well, I don't—I can't answer that, sir.

Q. You can't answer it? A. No.

(Testimony of Sam Bothman.)

Q. You read this before you signed it, didn't you?

A. I didn't read it any too carefully.

Q. But you did read it?

A. Yes, I read it over, and that is a passage that I just didn't notice too carefully.

Q. You did read it? A. That's right.

Q. And you swore to it before a notary public?

A. I did.

Mr. Shapiro: I will stipulate that he did.

The Witness: My signature is there.

Q. (By Mr. Nicoson): Now, Mr. Bothman, do you know, of your own knowledge, whether any of these six men, and by that I mean men mentioned as complainants in this case, have ever done any marking in your factory?

A. Done any marking? You mean carbon marking, or do you mean——

Q. Any kind of marking?

A. Yes, they probably have at various times, when a marker wasn't made, or something like that, or a short marker, they probably made markers.

Q. These men have made markers? [699]

A. Yes, but not carbon markers.

Q. How do you know they never made a carbon marker?

A. Because that is handled by one individual, and I usually check most of the carbon markers for yardage, and I don't recall ever having been called back by any of these boys mentioned to check one of these carbon markers.

(Testimony of Sam Bothman.)

Q. Were you in there all the time?

A. No, sir.

Q. Then you don't know what they do all the time?

A. Not all the time, no, not every minute of the day.

Mr. Shapiro: Before we get too far away from this point, will you mark in your notes, Miss Reporter, the passage that we had the set-to about, with respect to the question of the unit, because I want to refer back to that later, and it may be easier for you to find it now and mark it, or if you will give me the page number, I will mark it down.

Trial Examiner Erickson: Do you mean the part that she reread two or three times?

Mr. Shapiro: Yes, right.

Trial Examiner Erickson: The reporter may mark that page.

Q. (By Mr. Nicoson): Now, there wasn't anything wrong with Sardo's work, was there?

A. Not that I know of, no, sir. [700]

Q. As far as doing his work, he did a good job, didn't he?

A. Like the average cutter, yes, as far as I know.

Q. Did you ever have a woman cutter in a plant that received more than Usher or Lembke?

Mr. Shapiro: That is objected to as being incompetent, irrelevant and immaterial, and not in issue in this case.

Trial Examiner Erickson: Overruled.

(Testimony of Sam Bothman.)

Mr. Shapiro: There is a question pending, Mr. Bothman. Will you answer it?

The Witness: Yes. But I don't—

Q. (By Mr. Nicoson): Do you know Anne Block? A. Anne—

Q. Block? A. Anne Block?

Q. Block?

Mr. Sokol: I will give it the German brogue, Anne Bloch.

Q. (By Mr. Nicoson): B-l-o-c-k, Anne Block?

A. Yes, I have a recollection of having a girl cutter by that name.

Q. Do you recall paying her \$35 a week?

A. No, I don't recall what her salary was. However, I don't think you will find it was \$35 a week.

Q. When did she work for you?

A. She worked, I think, in 1939 and 1940, but I am not [701] sure. I will have to check the records on that to find out for sure about it.

Q. You don't know whether you paid her \$35 a week?

A. I am almost sure she didn't get \$35.

Q. Are you positive?

A. No, but I can get a definite answer by referring to the records.

Q. Do you want to bring the payroll in?

A. I can get a more definite answer by referring to the payroll.

Q. I would like for you to bring in the payroll.

(Testimony of Sam Bothman.)

Mr. Shapiro: Will you be satisfied with the witness' statement that he has looked at the payroll and what it shows?

Mr. Nicoson: No, sir.

Mr. Shapiro: Then you had better tell me what payroll record you want.

Q. (By Mr. Nicoson): Will you do that?

Mr. Shapiro: Yes, we will bring it in, if you want it.

Mr. Nicoson: I will submit that this——

Mr. Shapiro: I can tell you that.

Mr. Nicoson: Let's let the witness answer the questions.

Trial Examiner Erickson: All right.

Mr. Nicoson: When I want to question counsel, I will [702] put him on the stand.

Trial Examiner Erickson: All right. What is your answer, Mr. Witness?

The Witness: Yes.

Q. (By Mr. Nicoson): Will you bring it this afternoon?

A. Yes, if our recess will give me time to get over to the factory and get back.

Q. Let's don't have any qualifications. Will you or will you not bring it?

Mr. Sokol: Well, let's get to that at the noon recess.

Mr. Shapiro: May I have permission to say something, Your Honor?

Trial Examiner Erickson: Yes.

(Testimony of Sam Bothman.)

Mr. Shapiro: I will assure counsel and the Court that the record will be here at 2:00 o'clock.

Trial Examiner Erickson: All right.

Q. (By Mr. Nicoson): Now, when you had this conversation with Vito Cimarusti, Don Quinn and Nolan Berteaux out in front of your plant there in September, why did you find it necessary to call over Mr. Singer, to have a witness?

A. Because I wanted them to definitely know that they were invited to come back to work, so there wouldn't be no question about it.

Q. And that was after you had received Mr. Sokol's letter which is in evidence as Board's Exhibit 8, under date of [703] September 9, wasn't it?

A. Well, I don't recall the exact dates on that.

Q. You don't know whether it was or not?

A. Whether it was before the letter was received or after, I don't know that, no.

Q. If it was on September 26th, on Saturday, as you say, then it was after?

A. I said it was on Saturday, I didn't remember the date. However, if it were on the 27th, and the letter was written on the 9th, it was evidently after the time that it was done.

Mr. Nicoson: That is right. I think that is all.

Mr. Sokol: How long are we going to continue?

Trial Examiner Erickson: Well, what further is there after this witness?

Mr. Sokol: Oh, I have a few questions.

(Testimony of Sam Bothman.)

Trial Examiner Erickson: I know. I mean after we finish with this witness, is there anything further?

Mr. Shapiro: I may have one more witness, Your Honor, and in that case, Mr. Sokol—may I have your attention, Mr. Sokol? Will you have in court at 2:00 o'clock, or whenever we reconvene, Mr. Wishnak, or whatever his name is?

Mr. Sokol: I will make every effort to have him here.

Mr. Shapiro: I wish you could answer that a little more definitely.

Mr. Sokol: Positively. I will call him right now. [704]

Mr. Shapiro: You will have him here.

Trial Examiner Erickson: And you, Mr. Shapiro, will you have Miss Lembke and Miss Usher here at 2:00 o'clock?

Mr. Shapiro: Certainly.

Trial Examiner Erickson: Then we will recess now for lunch until 2:00 o'clock.

Mr. Shapiro: As far as I am concerned, I want to say that I don't stand on any ceremony, and if there are any records or any witnesses that the Court wants produced, I will produce them without a subpoena.

Trial Examiner Erickson: Yes, you have been very cooperative. I appreciate it. I take it, we are finishing today?

Mr. Shapiro: Yes.

Trial Examiner Erickson: That is the reason I am going over until 2:00 o'clock.

(Whereupon, at 12:15 o'clock p.m., a recess was taken until 2:00 o'clock p.m.) [705]

Afternoon Session

(The hearing was reconvened at 2:00 o'clock p.m.)

Trial Examiner Erickson: The proceedings will come to order.

Mr. Shapiro: If your Honor please, we have the two young ladies you requested me to have here. Would it be all right if your Honor questions them now so they can go back to work?

Trial Examiner Erickson: Yes. I will ask Miss Lembke to come to the stand.

KATHRYN LEMBKE,

called as a witness by the Trial Examiner, was examined and testified as follows:

Direct Examination

By Trial Examiner Erickson:

Q. I have only one question, Miss Lembke: I want you to tell me the size of the pattern that is given to you when you start your work?

A. Well, many sizes.

Q. Well, give me the ordinary size.

(Testimony of Kathryn Lembke.)

A. Well, whatever the order is for. I am not quite sure if I understand you, sir.

Q. You have a pattern?

A. We get a cutting ticket with maybe three 14's and three 18's and 6 12's.

Q. Well, take the biggest one that you have. How big is [706] the biggest you get?

A. Size 20.

Q. Now, describe that to me in inches or feet or whatever description you want to give.

A. Well, each dress is a different length.

Q. That is right.

A. If you have an elaborate dress, naturally the marker would be longer than if the dress is very simple.

Q. I want to know the average size of the marker that you get for the kind of work that you did, I will say, prior to the strike of January 24, 1941.

Mr. Shapiro: That is July 24th.

Q. (By Trial Examiner Erickson): July 24th; yes.

A. Well, I can give you an average size, but I am not—well, I will say four yards is a good average.

Q. No, I don't think you understand my question. I would like to know the size of the paper that you get as a marker.

A. How wide the paper is?

Q. Yes, width and length.

A. Well, the length depends on the size and the style of the dress. You understand that.

(Testimony of Kathryn Lembke.)

Q. Give me the average.

A. They are all entirely different.

Q. Give me one then.

A. Four yards I will give you as an average, and the paper [707] is about—we have 39 inch paper; we have 40 inch paper. We have different widths of paper. It depends upon the material. If we are cutting jersey we need wider paper.

Q. As I understand it, you cut——

A. Dresses.

Q. ——from a marker? A. Yes.

Q. And that marker is given to you?

A. Yes—no, I get it.

Q. Yes. A. Yes.

Q. You get it from—— A. Yes.

Q. ——a certain ticket. That is part of your work during the day? A. Yes.

Q. Is that right? A. Yes.

Q. Now, I will take an ordinary day prior to the strike. A. Yes.

Q. Which was July the 24th. How big was that paper? I mean in inches or feet or whatever you want.

A. I can't give you—I never measured in inches or feet. I just lay the marker out on a clean piece of paper and cut it off the length of the marker. I very seldom measure [708] it in inches and feet.

Q. I understand that. Do you have any understanding of an approximation in feet or inches of that paper that you get?

A. Yes. Well, I still maintain that a good aver-

(Testimony of Kathryn Lembke.)

age would be four feet—I mean four yards, for most of the dresses that I have cut prior to that date.

Q. That is the paper that you got on the ticket that was yours in the morning? A. Yes.

Q. Was four yards?

A. That is an average.

Q. All right. A. A generality.

Q. What does that piece of paper contain? What was on that paper?

A. Well, it has blue or red lines of the carbon, from the carbon paper, where the pattern has been marked in the most space saving way. The pattern has been laid on this paper and marked around it, and I have to cut that and on the inside of each piece of pattern it has the size, if it is 16, it is 16; and the style number it has once on each marker because each style is different.

Q. Well, I still don't know what is on that paper.

A. Well, I will see if I can make it clearer. There is a [709] straight line at the end of the paper signifying where the marker begins.

Q. What do you mean by "where the marker begins"?

A. Well, if I could show you with a piece of paper, or something, I could explain it.

Q. All right. I will give you a piece of paper.

Mr. Shapiro: I don't mean to interrupt, but would it facilitate matters any if the witness were shown any of the exhibits?

(Testimony of Kathryn Lembke.)

Trial Examiner Erickson: It might, but I will give her a piece of paper.

The Witness: For instance, this is how the marker looks.

Trial Examiner Erickson: Let the record show that she has a piece of yellow paper, that is lined, and she has put a square——

The Witness: A rectangle.

Trial Examiner Erickson: A rectangle on the inside of the paper.

The Witness: This is signifying about the shape of the marker. We will say this is a four yard marker. It doesn't have the given length on the marker anywhere.

Q. (By Trial Examiner Erickson) You are speaking about the marker. Is that something you get from somebody?

A. I get it myself out of the bin.

Q. Who makes that marker? [710]

A. The man who makes the marker, that happens to be Litwin in this case. The marker I get from Mr. Litwin will look like this. Then here it has a line, and has various shaped patterns.

Trial Examiner Erickson: Let the record show that the paper that the witness is using is Trial Examiner's Exhibit No. 1, and she has made a mark on what I would call the north part of the paper, and I have marked it "N"; and she has drawn a line, which is a quarter of an inch, by the exhibit, south of the rectangle that she originally made.

(Testimony of Kathryn Lembke.)

(Thereupon the document referred to was marked as Trial Examiner's Exhibit No. 1, for identification.)

The Witness: This is a poor drawing. The pieces of the pattern are fitted on this marker so that they will most conveniently take up the space of the paper without wasting any, because this paper is going to be just the exact size of the material. Well, do you want me to try and mark in all the pieces of the pattern on here?

Q. (By Trial Examiner Erickson) If you will tell the record just what you mean by it, yes.

Mr. Shapiro: Why don't you mark them "A", "B", "C", and so on, every time you put anything in there?

Trial Examiner Erickson: That is all right.

Mr. Shapiro: For instance, you have drawn two figures within the rectangular area. Mark them "A" and "B" and [711] state what they are, and so on.

The Witness: They would be the front blouse. They will both be "A" because they are each one half of the front blouse.

Q. (By Trial Examiner Erickson) Mark them both "A" then.

A. I can't really make a pattern—a marker without a pattern I mean.

Q. All I want to know is what you do.

A. Oh, all right. Then I take this marker, which has all these patterns drawn out on it. First I roll a plain piece of paper on the table. It comes

(Testimony of Kathryn Lembke.)

on a roll, a 39 inch roll, or a 42 inch roll of paper; and I roll it out on the table. Then where this line is here I fold my first piece of paper over like this (indicating) square with the table edge here so that it will be a perfectly straight line here (indicating).

I lay this blue carbon line on the straight of the marker, right on top of my fold on the paper line here. I then unroll this marked that has all these figures on it, these pattern figures. And where this paper marker ends, there will be another line. I therefore cut off my paper at that same spot, thereby knowing how long to make my material.

I then unroll my roll of material and I bring it down to the end. I have taken this marker with the figures off already. I have rolled it off. All I have left on the table [712] is a white piece of paper with the fold on this end, and cut off here at the right length.

I lay my material on this end where the fold of my paper is, and I place weights across the end of the material. I then stretch my material out straight, even it out with the selvege edge, straight with the edge of the paper here; and this edge straight with this fold so that my grain will be absolutely correct.

Then I tear off my material—I notch my material where the end of the marker is. I tear it across. I unroll my marker on top of my material, again placing the blue line on the beginning of the material; and I proceed to cut it out.

I am afraid that is rather mixed up.

(Testimony of Kathryn Lembke.)

Q. I think it is too. All right. Take your seat.

A. All right.

Q. I am still wondering about the first operation that comes to your attention in the performance of a day's work.

A. Oh, I look at my cutting ticket.

Q. All right, what is that?

A. It is a white sheet of paper that says—it has size 10, 12, 14, 16, 18, and 20 across the top.

Q. All right.

A. And it has different sizes marked down. It may have black, navy blue, print, down the first column. [713]

Q. All right. We will grant you have your cutting ticket now. Now, then, we are talking about a period—

A. Yes.

Q. —just prior to July 24th.

A. Yes.

Q. What is your next operation after you get your ticket? I mean as of that date.

A. Well, presume I had a size 12 dress to cut.

Q. All right.

A. So I therefore go over to the wall and it will be style, we will say, oh, 500, to make it general. I go over to the wall under the zeros and get down my 500 pattern. My 500 pattern will say "cut with marker 500." I will go to the bin where the markers are. There are six markers, one to each size, tied together in a bundle.

Q. This is just before the strike?

A. Yes. I go to the bin and I take out the

(Testimony of Kathryn Lembke.)

marker that is size 12, because that is the one I am going to use.

I take it back to my table and unroll that marker. I unroll my sheet of paper and do the process which I just explained to you.

Q. All right.

A. And after I have completed cutting out the dress, I am all through with that dress, and I wrap it up. I cut trimming, if there is any trimming to be cut. I roll the [714] dress up in a bundle and I tie a string around the dress and lay it at the end of the table and proceed to cut another dress.

Q. All right; go ahead.

A. And after I have cut all the sizes on that ticket, as each size is cut, I circle the size on the ticket, signifying that it has been cut. After each size is cut, I either take it down to the assorters, or else the assorters come up and get it from me.

Then I look at my next ticket and do the same process over.

Q. Do you have a pattern of a complete dress?

A. Certainly.

Q. What do you call that?

A. Well, a sample dress, you mean?

Q. No, I mean a complete dress that is to be produced by Lettie Lee, Inc.

A. That is the pattern of that certain style.

Q. Do you ever see the marker for that?

A. Yes.

Q. What part of the marker do you see?

A. Well, whichever part I happen to be cutting.

(Testimony of Kathryn Lembke.)

Trial Examiner Erickson: All right, that is all.

Mr. Nicoson: May I ask a question?

Trial Examiner Erickson: Yes, you may. All the parties [715] may ask questions of this witness.

Cross Examination

By Mr. Nicoson:

Q. Now, when you were engaged in sloping, you don't follow this process that you have just recited, do you? A. No.

Q. What is the size of the paper you use, if you use a piece of paper, when you slope?

A. Well, every cutter has the same roll—every cutter has a roll of paper and they are most generally all 39 inch rolls or 40 inch rolls. It all depends.

Q. Do you use that four yard roll to slope with?

A. Yes.

Q. Why do you use all of it?

A. Well, it is much easier to get paper. The paper is much cheaper than material and it is much easier to get it off grain, if you can't have it straight this way and straight this way (indicating).

Q. But you don't use all of it; you just use a portion of it, which happens to be attached to the longer part. Am I right about that?

A. Well, you are talking about sloping?

Q. Yes; I am talking about sloping now.

A. Yes.

Q. That is right, isn't it? [716] A. Yes.

(Testimony of Kathryn Lembke.)

Q. You don't use all of the marker when you slope, do you?

A. Well, you don't use the marker to slope; you make your own marker.

Q. Oh, that is right. Now, when you slope, that is what I want to find out. A. Yes.

Q. What is the size of the paper, or marker, or pattern, or whatever you choose to call it?

A. Well, the marker is made on the same size paper as the plain paper that you lay underneath.

Q. Is it four yards long? Now, you are just sloping, you understand.

A. You have a roll of paper.

Q. I understand you have a roll of paper, but you don't use the entire roll, do you?

A. No. You don't cut off any certain length, you just unroll it on your table and leave it fastened on the roll.

Q. You take a portion of the marker?

A. No, you don't use the marker. You get the pattern then.

Q. Now, you get the pattern? A. Yes.

Q. And you mark off from the pattern, onto this piece of paper, the portion of the garment that you are going to slope? [717] A. Yes.

Q. Is that right? A. Yes.

Q. Now, let's suppose now that we are going to slope the skirt; is that a fair example?

A. Yes.

Q. As I understand, by sloping you make an arrangement, whereby you take it in at the waist

(Testimony of Kathryn Lembke.)

and allow for a slope to go over the hips; is that correct? Is that one of the sloping operations?

A. Well, sloping is because the material has to be tucked or pleated.

Q. Yes. A. You don't—

Q. Well, for example, we will say we have already pleated this piece of goods. It has been sent out; and now it comes back to you and you are to slope it. Now, let's say, for the example, that it is a skirt that we are about to slope. Then are your duties, for example, to make a provision whereby the waist comes in, then gradually comes to the hip measurements? Is that about right? It not, you correct me.

A. Well, enough material has been sent out to be pleated so that it will be larger than the piece that you are going to slope, because, naturally, some will fall away, so you have this large piece of pleating. [718]

Q. That is right.

A. It is not too much larger; it is just about the right size. You lay your pattern on the paper, make a marker, although you can lay the pattern right on the pleating, which is usually done, and take a piece of chalk. You have to lay the pattern on the right grain, mark around there, then proceed to cut it out. It is lying on the bottom paper though.

Q. Now, when you put the pattern on there, you don't use the entire pattern, do you; you just use a portion of it?

(Testimony of Kathryn Lembke.)

A. You use the parts that are needed for that style?

Q. So you don't use the entire pattern?

A. Not completely.

Q. We are just sloping this skirt.

A. You just use the skirt pattern.

Q. You just use a portion of that entire design?

A. Yes.

Q. Which is called the pattern? A. Yes.

Q. Is that correct? A. Yes.

Q. And that is the same whatever you happen to be sloping, whether it is, whatever you call these doo-dads on the front of the dress, blouse?

A. Bodice or blouse. [719]

Q. Bodice or blouse? A. Yes.

Q. Or panel that fits in the front of the waist, or whatever you call it. You just use the portion of the pattern, which is necessary to guide you in that sloping operation? A. Yes.

Q. (By Mr. Sokol) Before the strike, you devoted yourself mainly to cutting trimmings for the cutters, didn't you?

A. Yes. That is directly before the strike. A year before I——

Q. Now, please, I only asked you that question. You don't have to volunteer.

Cross Examination

By Mr. Shapiro:

Q. What did you do a year before the strike?

Mr. Sokol: Objected to.

Trial Examiner Erickson: Overruled.

(Testimony of Kathryn Lembke.)

The Witness: I cut dresses.

Q. (By Mr. Shapiro) Now, Miss Lembke, I will show you Respondent's Exhibit 5 in this case. Will you unroll that, or do whatever you like with it, and tell me what it is?

A. This is a Lettie Lee dress marker, size 16, and this part, evidently, you tear out for pleating, or tucking of some sort. It says "tear out" on here, and it has the size and the style. [720]

Q. Now, you referred in your answer to the Trial Examiner's question—the sound effects are here again, your Honor.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) You referred in your answers to the Trial Examiner's questions to a sheet of paper, which you said was about 39 or 40 inches wide; is that the piece of paper that you refer to as being about 39 or 40 inches wide? A. Yes.

Trial Examiner Erickson: I think it was four yards wide.

Mr. Shapiro: No; long, your Honor.

The Witness: Four yards long.

Mr. Shapiro: But I am asking about the width.

The Court: Oh, all right.

Q. (By Mr. Shapiro) 39 or 40 inches wide?

A. Yes.

Q. Is that this paper that you refer to?

A. Yes.

Q. And you refer to the paper as being about four yards long; is that the same paper that you refer to? A. Yes.

(Testimony of Kathryn Lembke.)

Q. You mean that if this were rolled out, you think it would be about four yards, or about 12 feet long; is that correct?

A. That is an average. [721]

Q. All right.

Would it be any better, your Honor, if we unrolled this on the table?

Trial Examiner Erickson: You may do anything with it you desire.

Mr. Shapiro: Will you step over here, Miss Lembke?

Trial Examiner Erickson: Let the record show that Exhibit 5 is being unrolled on the counsel table and that all parties are present to observe what is being done.

The Witness: This is the straight line which I was referring to on this end, and on the other end——

Mr. Shapiro: The witness has just referred to a blue line at the extreme end of the paper. Now, let the record show that the exhibit unrolled on the table is approximately 15 feet long.

Trial Examiner Erickson: Is there any objection to that?

Mr. Nicoson: No objection.

Trial Examiner Erickson: I will say 15 feet.

Mr. Shapiro: Or five yards, approximately.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) Is this the paper, which you said the length, or the average length would be about four yards? A. Yes.

(Testimony of Kathryn Lembke.)

Q. Now, what do you call this paper, this exhibit? [722] A. This is a marker.

Q. All right. Let's assume that this is your cutting table, the table that this is now spread out on, and you have received your ticket. You have gone to the bin and have obtained your marker for your first operation to commence the day's work. You understand that, Miss Lembke? A. Yes.

Q. Then you would obtain this marker; is that correct? A. Yes.

Q. Then what do you do with the marker? Just pretend that we are now in the factory and this is your cutting table.

A. First of all I cut it off right here.

Trial Examiner Erickson: I am going to caution you right here that that means nothing in the record.

Mr. Nicoson: When she said "cut off right here" she pointed to the portion of the exhibit on which Mr. Bothman this morning wrote the word "trim." There appears two parallel blue lines approximately, I would say, two and a half feet from the end of the roll.

The Witness: Wherever there happens to be such two ends with the double face, like this, this is approximately the width of the yardstick here, I would cut them both off.

Mr. Nicoson: By "double face" the witness refers to the two parallel blue lines drawn on the exhibit adjacent to the [723] word "trim" written there in lead pencil.

(Testimony of Kathryn Lembke.)

Trial Examiner Erickson: Is that so understood?

Mr. Shapiro: It is so understood.

The Witness: Yes.

Trial Examiner Erickson: All right.

Q. (By Mr. Shapiro) Now, Miss Lembke, you have stated so far that the first thing you would do would be to cut it off—would be to cut off the marker? A. Yes.

Q. At the two double lines that Mr. Nicoson, counsel for the Board, has just referred to; is that correct? A. Yes.

Trial Examiner Erickson: Now, do you mean that you separate the paper?

The Witness: Yes.

Trial Examiner Erickson: All right.

The Witness: Separate the paper and lay it aside, roll this piece up and lay it aside.

Q. (By Mr. Shapiro) When you say "this piece" you refer to the piece which is marked "flat crepe"? A. Yes.

Q. Is that right? A. Yes.

Q. Why do you cut it off and lay it aside?

A. Because the flat crepe is part of the trimming, and I [724] always cut my trimming in the end. If I should care to cut it first, I can lay the dress marker aside and cut this first.

Trial Examiner Erickson: Let me ask a question here.

Redirect Examination

Q. (By Trial Examiner Erickson) Are you the

(Testimony of Kathryn Lembke.)

first person that gets this building, as I called it this morning?

A. Am I the first person——

Q. Yes, this exhibit that you are talking about now, are the first person who gets that?

A. Well, every cutter does the same process as I do.

Q. Do you mean that of the ten cutters, as was testified you had in the plant, each of the ten gets one of this same exhibit, No. 5, that you are talking about now?

A. No. This is my style. I mean if this should be the style of my ticket, this would be the style I alone cut at this time. They have other styles.

Q. All right. We will grant you that this is your style. Are you the first person who gets this long roll of paper that we have talked about, as Exhibit No. 5?

A. Well, other cutters may have cut it before me, not this sheet——

Q. Now, that is what I am trying to get at. Other cutters may have cut it before you. Now, what do you mean by that? Do you mean that they have cut this particular exhibit?

A. No.

[725]

Q. Or the material that is shown to be cut on the exhibit?

A. Yes, the material that is shown to be cut on this, another carbon copy of the same exhibit.

Q. Well, now, to me, as I said this morning, you have the same thing here as you have in the con-

(Testimony of Kathryn Lembke.)

struction of a building. An architect has drawn this; is that right? A. Yes.

Q. And you call the architect a designer?

A. No. The one that draws this on here is our marker.

Q. Well, I mean the creator then?

A. Yes.

Q. And whoever creates it is the designer?

A. Yes.

Q. Then you make blueprints of the designer's creation? A. Yes.

Q. Is that right? A. Yes.

Q. What I am interested in is after the blueprint has been made, who is the first person who gets the blueprint?

A. If I am the first person to have that style on my cutting ticket, then I am the first one to get this blueprint. I can't get them all first.

Trial Examiner Erickson: All right.

Mr. Sokol: I think, Mr. Examiner, that what we have to bear in mind is that in an emergency, caused by a strike, [726] other conditions arise. I have sought to confine this to the period prior to the strike.

Trial Examiner Erickson: I think I have made it definite I am talking about a period prior to the strike. You understand that?

The Witness: Yes.

Mr. Sokol: She is talking about the present and she has been.

Trial Examiner Erickson: No. If there is any-

(Testimony of Kathryn Lembke.)

thing you have said that refers to after July 24th, would you so state on the record.

The Witness: Yes, these markers are identical to the ones we used then.

Q. (By Trial Examiner Erickson) I mean what you are doing now is what you have done——

A. Yes.

Q. Prior to July 24th? A. Yes.

Q. All right. Now you have gotten the blueprint. What do you do with it You are the first person who has the blueprint from the designer?

A. All right.

Q. What do you do with it?

A. I have already stated that I cut it off. I unroll my sheet of paper on my table, my clean roll of paper on the [727] table.

Mr. Shapiro: Now, your clean sheet of paper on the table, that is not this sheet of paper?

The Witness: No.

Mr. Shapiro: It is a plain white sheet of paper with nothing on it?

The Witness: Nothing on it.

Q. (By Trial Examiner Erickson) Do you remove the marker from the table first?

A. Yes.

Q. All right. Let's assume we have picked this marker up, this exhibit, we have taken it off the table, and now you have laid a length of plain white paper on the table; is that correct?

A. That is right. We will say it starts here.

(Testimony of Kathryn Lembke.)

I have rolled it down to that end. The roll is down at that end.

Mr. Shapiro: From one end of the table to the other.

The Witness: Yes.

Q. (By Trial Examiner Erickson) Do I understand you correctly, that this entire four foot roll is given to you the first thing in the morning?

A. I go and get it the first thing in the morning, yes.

Trial Examiner Erickson: All right.

Mr. Sokol: I believe you said "four foot"; you meant four yards? [728]

Trial Examiner Erickson: Yes, whatever it is.

Recross Examination

Q. (By Mr. Sokol) I want to get this off so I won't have to object any further. Before the strike you were cutting trims. Will you show the Examiner on this Exhibit 5 what you mean by cutting trims?

A. This part of the paper, right here, that has the flat crepe you would cut.

Q. That is right at the end of the paper?

A. Yes.

Q. That is all you did for how many months prior to the strike?

A. I had dresses to cut if they needed them.

Q. I am talking of before the strike, for months——

A. Yes.

Q. ——all you did was cut trims for the men cutters; isn't that right?

(Testimony of Kathryn Lembke.)

A. Unless they needed a dress and I would cut a dress.

Q. An individual dress? A. Yes.

Q. But you primarily cut all of the trims; that was your job? A. Yes.

Q. For months prior to the strike; isn't that right? A. Yes.

Mr. Sokol: Now, I submit it is immaterial what she did [729] at any other time.

Trial Examiner Erickson: I don't agree with Mr. Sokol. I am still relying on the answer I got from Miss Lembke, that before the strike, this entire exhibit that is being shown here, would be one of the first receipts that she got after she got her ticket in the morning; is that right?

The Witness: Well, if I had a ticket, this would be the first thing I do.

Redirect Examination

Q. (By Trial Examiner Erickson) All right. Now, after you got that, you performed the operations that were required of you in the shop; is that right? A. That is right.

Q. All right. Now, go ahead.

A. You want me to show you how I would cut it out?

Q. Well, I am going to ask you one question.

A. Yes.

Q. To me this entire four yard roll is like giving an architect, or a contractor I mean, a blueprint from the architect, and the contractor is supposed

(Testimony of Kathryn Lembke.)

to construct a building from this blueprint. Now, as I understand it from the testimony in this case, a person who is called a cutter can take this blueprint and, by his ingenuity and skill that he has, he can construct a building, which is the dress that eventually happens. And if I am correctly informed, and I [730] wish to be advised if I am wrong, the cutting operation is to the extent that if a particular dress doesn't fit the style of the girl, who buys the dress, it is the fault of the cutter. Am I wrong so far?

Mr. Bothman: That is not necessarily correct.

Mr. Sokol: Oh, now, Mr. Bothman.

Mr. Bothman: It isn't necessarily the fault of the cutter if a dress doesn't fit a girl. That is a very, very broad statement.

Trial Examiner Erickson: Tell me now how I differ.

Mr. Sokol: Mr. Examiner, Mr. Bothman is not on the witness stand.

Mr. Shapiro: He is under oath, and the Examiner asked to be corrected if he was wrong.

Trial Examiner Erickson: That is right, I did.

Mr. Bothman: For instance, if this particular mold that you have here is laid on the material and cut absolutely correct, there are several other processes that this dress has to go through.

Trial Examiner Erickson: I certainly think that you, as a manufacturer, would bear with me on the very essential human equation that might result, but I mean if you had a perfect model.

(Testimony of Kathryn Lembke.)

Mr. Bothman: And they cut according to this model.

Trial Examiner Erickson: And the material was cut [731] according to the pattern, or whatever you call this particular Exhibit 5, there wouldn't be any flaws in the dress. That would fit the girl who bought that particular model?

Mr. Bothman: Provided the balance of the garment was properly constructed, yes. That is right.

Trial Examiner Erickson: Well, we allow for what we call the human equation.

Mr. Bothman: That is right.

Trial Examiner Erickson: Is that right?

Mr. Bothman: That is right?

Q. (By Trial Examiner Erickson) Now, Miss Lembke,— A. Yes.

Q. I am going to give you this particular exhibit. Now, you get it in the morning with your ticket? A. Yes.

Q. Well, my wife is a perfect 12. Make her a dress out of this pattern and tell me what you do in the cutting. I don't mean that you are going to construct it, but I am going to ask you to tell me what you do about this pattern, or this marker rather.

A. This is a size 16. You mean what I would do to make a 12 out of it?

Q. No, make it a 16.

A. All right. Well, if she is a perfect 16, and if our sample is a perfect dress, then this will fit her. [732]

(Testimony of Kathryn Lembke.)

Q. I am asking you now to tell me what you do with this particular exhibit here, No. 5; and I am talking now about a period before July 24th.

A. Yes. My clean roll of paper is on the table. I will fold the end of my clean sheet of paper like this (indicating).

Q. You mean your clean roll of paper is something different from the exhibit?

A. Yes. Well, I have to have a clean roll in order to get her a perfect 16. I fold this straight with this edge clear across, so that I have a perfectly straight line. This is on a clean sheet of paper; we are assuming this is a clean sheet. I then lay my marker at this line here where I have cut it off, since this is the beginning of my dress here (indicating).

Q. All right. Now, tell the reporter what you mean by "here".

Mr. Shapiro: She is referring to the same line that Mr. Nicason previously identified, as being the line marked "trim" by Mr. Bothman.

I think we really need two sheets of paper to make this demonstration.

Trial Examiner Erickson: Well, I will forego that examination. I will ask Miss Lembke one question. You don't have to answer that.

Mr. Shapiro: Your Honor, don't think that I object to [733] it. I am very happy to have the witness do it. Might I make this suggestion, your Honor? In my mind, for some reason, this entire procedure is very plain and I am at a loss to under-

(Testimony of Kathryn Lembke.)

stand the confusion. Apparently, there is something that your Honor doesn't quite get about this explanation.

I would make this suggestion: I am sure that Mr. Bothman will get for us the necessary cloth, the necessary white paper, and the shears, and let any of these girls, or anybody else cut it out and show it to your Honor, so that we can see what they actually do.

Trial Examiner Erickson: There is no confusion in my mind.

Mr. Shapiro: Then I am confused.

Trial Examiner Erickson: My portion of the case is to get the facts in the record to support the thoughts that I have.

I will call it the after creation of a garment, I am just wondering whether Miss Lembke could take the design of an architect and make a dress.

The Witness: Certainly I can.

Q. (By Trial Examiner Erickson) Can you?

A. Yes.

Q. Do you mean that you can take that paper there and produce the entire product?

A. I certainly can. I can make this paper myself. [734]

Q. You can make the paper yourself?

A. Not the paper, but the marks on the paper myself.

Q. Well, I am satisfied now. That is all I want with you.

Mr. Shapiro: I have no questions.

(Testimony of Kathryn Lembke.)

Recross Examination

Q. (By Mr. Sokol) I have a question, Miss Lembke.

You weren't working for the company in June, 1941, were you? A. No.

Q. Did you ever know of an increase given to the men cutters only?

Mr. Shapiro: That is objected to as being immaterial.

Mr. Sokol: It is quite material. It is the crux of this case.

Trial Examiner Erickson: It is overruled.

The Witness: What is the question?

Mr. Sokol: Read the question.

(The question was read.)

The Witness: I don't know of any at that time, although they have mentioned increases at various times to which I didn't pay any attention, because they were always kidding me.

Q. (By Mr. Sokol) But you knew that the men cutters had increases, all together as a group, when you didn't get any increase; isn't that right?

A. I wasn't there, sir. No, I didn't know about that [735]

Q. At other times? A. Other times?

Mr. Shapiro: Suppose you take the witness stand and sit down, if you are going to be questioned.

The Witness: I would be glad to cut this out if you would like to have me.

(Testimony of Kathryn Lembke.)

Q. (By Mr. Sokol) Will you take the stand, please. A. Yes.

Q. There is just one thing I would like to have you clear up for the Examiner. In June 1941 the men cutters alone got a wage increase?

A. Yes.

Q. Will you tell the Trial Examiner, if you know from discussion or otherwise, that the men got increases, as a group at other times when you did not get an increase with them? Will you tell the Examiner?

A. I don't know of any increase that they got, as a group, that I didn't get, that I knew of at any time.

Q. Did you ever get an increase when they got an increase?

A. I don't really know, sir. I don't think that my increases came when their did.

Mr. Sokol: That is all.

Q. (By Mr. Nicoson) Now, would you mind stepping down here for just a moment, please?

We still have before us this big long sheet of paper, [736] which you have unrolled, and which is Respondent's Exhibit 5, and when you were describing this paper, you said that you would begin by unrolling it on the paper, then you came down to the end which bears the word "trim" again to two parallel blue lines? A. Yes.

Q. I believe that I understood you to say that the first duty that you would do, if you were going to cut the dress, would be cut off the portion from

(Testimony of Kathryn Lembke.)

the word "trim" to the near end of the marker, and lay that aside? A. Yes.

Q. Is that correct? A. Yes.

Q. Now, when you were cutting only trimming, did you then only use the portion, this small portion, which you have just described as having cut off and laid aside? A. Yes.

Q. And you didn't use then the rest of this pattern at all? A. No.

Mr. Nicoson: That is all.

Recross Examination

Q. (By Mr. Shapiro) When you were cutting complete dresses, and not just trim, you used not only the portion that Mr. Nicoson just asked you about, which you cut off, but the rest— [737]

A. Yes.

Q. —of the marker; is that correct?

A. Yes.

Mr. Shapiro: All right. That is all.

Trial Examiner Erickson: And that was before July 24, 1941?

The Witness: Yes.

Mr. Sokol: May we get the date? If it was six years ago it isn't material, your Honor. When was that exactly?

The Witness: I don't know exactly.

Mr. Sokol: You don't? That is all.

Mr. Shapiro: Just a minute. I don't want to leave any inferences here that need to be cleared up.

(Testimony of Kathryn Lembke.)

Q. (By Mr. Shapiro) When did you leave on your vacation just prior to July, 1941?

A. The latter part of May.

Q. All right. In the month of May, did you cut any entire dresses?

A. I don't recall, sir.

Q. Did you in the month of April?

A. I don't really know. I couldn't tell you what I cut yesterday, how many.

Q. Can you state whether in the year 1941 you cut complete dresses, as distinguished from only cutting trim?

Mr. Sokol: Objected to as leading and suggestive. [738]

Trial Examiner Erickson: Overruled.

The Witness: Yes; I have cut complete dresses in 1941.

Mr. Shapiro: That is all.

Now, I make this offer at this time.

Trial Examiner Erickson: What offer?

Mr. Shapiro: My offer is this: If there is anything that anyone wants cleared up, and if the facilities of our factory can be used to clear it up, I will recommend that at the Court's convenience, day or night, that we go there and that Miss Lembke, or Miss Usher, or anyone else go through the exact physical motions of everything that your Honor has inquired about, under exactly the circumstances and conditions prevailing during working hours.

Trial Examiner Erickson: There has been on suggestion of that kind of an examination. As a

(Testimony of Kathryn Lembke.)

matter of fact, I am going to excuse Miss Usher now.

Mr. Shapiro: All right. If your Honor is satisfied, I am satisfied. I simply wanted to make available any form of evidence that we have to satisfy everybody. Is there anything further, your Honor, or counsel?

Trial Examiner Erickson: Nothing further. Miss Usher and Miss Lembke can be excused. Thank you for coming.

(Witness excused.)

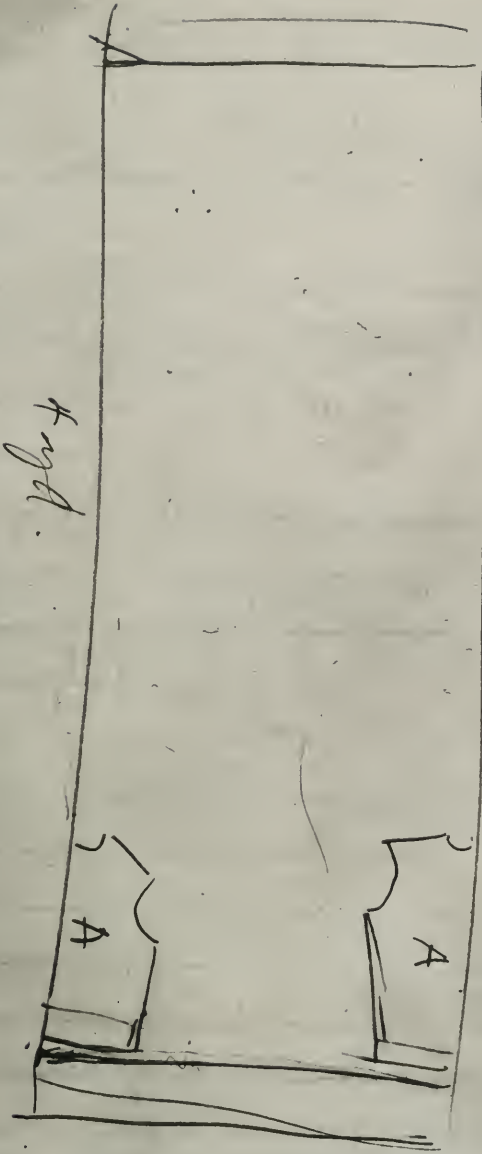
Mr. Sokol: Mr. Shapiro, will you call Mr. Wishnak out of turn? [739]

Mr. Shapiro: Yes.

Mr. Nicoson: Do you want to put this yellow sheet in the record?

Trial Examiner Erickson: Yes. That will be received in evidence as Trial Examiner's Exhibit No. 1.

(Thereupon the document referred to was marked as Trial Examiner's Exhibit 1, and was received in evidence.)



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NATIONAL LABOR RELATIONS BOARD
 CASE NO. XXI-C-1807
 IN THE MATTER OF Local 800
 PETITIONER, Union
 VERSUS Exhibit No.
 DATE 1/29/44 BY Lettie Lee
Daniel W. Ross
 OFFICIAL REPORTER

W

Trial Examiner Erickson: I don't know if it will be very helpful. And I will charge Mr. Nicoson with making a copy of that.

Mr. Nicoson: I didn't catch that.

Trial Examiner Erickson: Read it, Mr. Reporter.

(The record was read.)

Trial Examiner Erickson: Off the record.

(Discussion off the record.)

GEORGE WISHNAK,

called as a witness by and on behalf of the Lettie Lee, Inc., having been previously duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Shapiro) Are you an officer of the International Ladies' Garment Workers' Union?

A. Yes.

Q. What officer?

A. Representative of the International. [740]

Q. Representative of the International?

A. Yes.

Q. Do you hold any office, such as president of that or secretary? A. No, sir.

Q. But you are a representative of the International— A. Officer.

Q. Organization? A. Yes.

(Testimony of George Wishnak.)

Q. Now, the national organization, that is the I. L. G. W. U., has a lot of locals; doesn't it?

A. Yes.

Q. How many? A. I think about 300.

Q. And in Los Angeles how many locals does it have?

A. We have the cutters local, operators local, pressers, cotton goods dress local, and the sportswear local.

Q. The cutters, operators, pressers, cotton—

A. Garments.

Q. —cotton garments? A. Yes.

Q. And sportswear? A. Yes.

Q. Those are all the locals you have in the city of Los Angeles? [741] A. Yes.

Q. The cutters is Local No. 84, I think?

A. Yes.

Q. What is the operators?

A. Dress Operators, 96.

Q. Yes. A. Cloak Operators, 65.

Q. Dress Operators is 96? A. Yes.

Q. What is the Pressers? A. 97.

Q. What is 65?

A. Operators, Cloak Operators.

Q. Cloak Operators? A. Yes.

Q. Now, that is a local you didn't tell us about?

A. Well, I am just trying to tell you.

Q. Then you didn't give it to me in your first enumeration.

A. That is right. I didn't give it to you.

(Testimony of George Wishnak.)

Q. That makes another one, the Cloak Operators?
A. Yes.

Q. So that in Los Angeles there are seven locals?
A. Yes.

Q. There is a joint board of Los Angeles, California, is there not? [742]
A. Yes.

Q. Of the International organization, or the national?
A. Two joint boards.

Q. What are those two joint boards?

A. One is the cloak joint board, and the dress joint board.

Q. Who are the representatives of the dress joint board in Los Angeles?
A. I am.

Q. You are?
A. Yes.

Q. Anyone else?

A. At the present time we don't have any except Cutters Local 84, Mr. Jack Haas.

Q. Is Louis Levy an officer or representative of the International Ladies' Garment Workers'?

A. Yes; he is vice-president.

Q. Is he a member of the joint board of Los Angeles?

A. He is the manager of the cloak joint board.

Q. And Ethel McGee, is she a member of the joint board?

A. She is the chairlady of the dress local 96, and she is a member of the dress joint board.

Q. And Rose Harrington?

A. She is chairlady of the executive board.

Q. Who is Abe Lankenson?

A. Who? [743]

(Testimony of George Wishnak.)

Q. Abe Lankenson, L-a-n-k-e-n-s-o-n.

A. I don't know.

Q. You don't know him? A. No.

Mr. Sokol: I think that is the Cutters' representative.

The Witness: Maybe you mean Tankenson. He is a member of the dress joint board, who is a cutter.

Mr. Sokol: He represents the cutters.

Q. (By Mr. Shapiro) Are you acquainted with an organization known as the Dress Association of Los Angeles? A. Yes.

Q. The joint board of the International Ladies' Garment Workers' Union, representing the cutters, operators, pressers, and cloak operators have an agreement—— A. Yes.

Q. ——with the Dress Association of Los Angeles; do they not? A. Yes.

Mr. Shapiro: I have shown this to Mr. Sokol. He has produced the original, pursuant to my demand, and he has compared it with the copy, and states that this is a true copy; and has asked me to use the copy in lieu of the original.

Mr. Sokol: I didn't ask you to use it. I will stipulate it is a true and correct copy of the original.

Mr. Shapiro: You prefer that your original not go into [744] evidence?

Mr. Sokol: That is right.

Trial Examiner Erickson: And you have a duplicate original?

Mr. Shapiro: Yes, I do. It is a mimeographed duplicate.

(Testimony of George Wishnak.)

Trial Examiner Erickson: I mean for the record you have another copy?

Mr. Shapiro: I haven't, but I will get it. I will ask, as a matter of fact, if Mr. Wishnak would, as a member of the board, get a duplicate?

The Witness: I haven't got one made up, but I will make one up for you.

Mr. Shapiro: Would you like to see this before I show it to the witness?

Mr. Nicoson: I certainly would.

Mr. Shapiro: Mr. Nicoson, will you stipulate that this is a true copy of the original agreement?

Mr. Sokol: My stipulation is sufficient.

Mr. Nicoson: That is good enough for me.

Mr. Shapiro: I will offer this in evidence.

The Witness: May I see it?

Mr. Shapiro: Yes.

Q. (By Mr. Shapiro) I will show you a mimeographed copy of an agreement, dated August 8, 1941, between the Dress Association of Los Angeles and the International Ladies' [745] Garment Workers' Union, and the Joint Board of the City of Los Angeles, State of California, composed of Locals 96, 97, 84, and 85, acting for and in behalf of all of the members of said locals.

A. I want to make one statement.

Q. I will give you all the opportunity you want. And I will ask you if you recognize this as being a true copy of the original, which counsel has handed me?

A. I haven't read it, but I should think it is. It looks like one.

(Testimony of George Wishnak.)

Trial Examiner Erickson: What is the purpose of the offer?

Mr. Shapiro: The purpose of the offer, your Honor, is to show that whenever the union deals or negotiates with manufacturers in the dress industry, they do so on behalf of all four locals; that is on behalf of all four of those crafts, the cutters, the operators, the pressers, and the cloak operators. And we offer it for the purpose of showing the custom and practice in the industry in the city of Los Angeles.

The Witness: May I make a statement.

Trial Examiner Erickson: You can make a statement. You are within your rights.

The Witness: May I make a statement on this agreement because there is—— [746]

Q. (By Mr. Shapiro) I will ask the questions, if you don't mind.

A. I want to tell you about this agreement, what it represents.

Q. Mr. Wishnak, if you please. I want to be as courteous as I can.

A. There is something in the original which isn't here, and I want to tell you about it.

Mr. Shapiro: Then I will ask you to produce the original, pursuant to my demand.

Mr. Sokol: What do you refer to?

The Witness: I refer to the signature of the Mayor's Committee. This agreement was signed by the Mayor's Committee to which Mr. Bothman did not appear.

(Testimony of George Wishnak.)

Mr. Sokol: Well, I only have a copy.

Mr. Shapiro: Do you have a signed copy?

Mr. Sokol: Was it signed?

The Witness: Yes; it was signed.

Mr. Shapiro: I don't know if it was signed by the actual parties. It was signed.

I will stipulate it is a true copy, so let it go in.

The Witness: So there should be no misunderstanding I wanted to add this qualification. That is all.

Mr. Sokol: That will all come out on examination.

Trial Examiner Erickson: Do you offer that now? [747]

Mr. Shapiro: I offer the agreement of August 8th as Respondent's Exhibit 6.

Trial Examiner Erickson: If you will produce the copy, I will receive the exhibit. Mark it as being received.

(Thereupon the document referred to was marked as Respondent's Exhibit 6, and was received in evidence.)

RESPONDENT'S EXHIBIT No. 6

AGREEMENT

This Agreement, made and entered into this 8th day of August, 1941, by and between the Dress Association of Los Angeles, a non-profit corporation, acting for and in behalf of itself and each of its members who shall ratify and approve this Con-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)
tract, in writing, Parties of the First Part, said Party hereinafter to be referred to as the "Association," and the International Ladies' Garment Workers' Union, and the Joint Board of the City of Los Angeles, State of California, composed of Locals 96, 97, 84 and 65, acting for and in behalf of all the members of said locals who are affiliated with the said International Ladies' Garment Workers' Union, hereinafter, collectively referred to as the "Union," Parties of the Second Part;

Now, Therefore, in consideration of the mutual obligations imposed and the mutual benefits derived therefrom, it is hereby covenanted and mutually agreed between the parties hereto, as follows:

PREAMBLE

The basic purposes of this Agreement are:

First: To obtain through mutual cooperation between the parties hereto the greatest possible yearly employment and earnings under the best possible working conditions.

Second: To assist each other in every fair and constructive way to further the prosperity of the Industry through mutual efforts towards increasing the annual output of the Union Firms.

Third: To provide methods for the fair and peaceful adjustment of all disputes which may arise between the parties hereto and their members.

Fourth: To secure the uninterrupted and gen-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

eral stabilization of the industry. The Union further understands the necessity of and agrees to maintain continued organization efforts with a view of bringing under this agreement all Silk and Wool Dress Manufacturing plants in the Los Angeles area who are competing with, but are not working under the fair conditions herein stipulated.

Fifth: All parties hereto agree that these fundamental purposes shall serve as guiding influences in the settlement of all prices, problems, disputes, grievances and differences between them or through the Impartial Chairman during the life of this Contract, the provisions whereof are hereinafter set forth.

Sixth: This agreement and all wage increases, benefits, requirements and mutual responsibilities hereinafter set forth are to accrue to and be an obligation of the parties hereto from and including July 1, 1941, as their respective interests may appear.

TERMS

1. Union Membership. All workers employed by members of the Association who are members of the Union, or who hereafter join the Union, shall, as a condition precedent to their employment, remain members in good standing, in said Union; those workers now employed who are not now members of the Union, shall become members of the Union as a condition precedent to further employment.

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

2. All persons hereafter employed by members of the Association shall, as a condition of their employment, become members of the Union within two (2) weeks, ten (10) full working days, from and after the date of the commencement of their employment.

2A. Should the Dress Association of Los Angeles or any of its members, who have signed this contract, be sued because of their compliance with provisions One (1) and Two (2) hereof, the International Ladies' Garment Workers' Union, at its own expense, agrees to provide Counsel and the necessary Court fees of such litigation.

3. Employment Bureau. An employment bureau is to be established by the Union and all placements and replacements shall be made through such Bureau. If, however, such Bureau shall be unable to supply Union workers within twenty-four (24) hours as may be required, the employer or employers shall have the right to employ any workers they may find, but such persons so employed shall at the expiration of two (2) work weeks, or ten (10) working days, become members in good standing of the Union as a condition of employment. Said employment bureau shall operate fairly and without discrimination with respect to members of the Association.

4. Working Hours and Overtime. All week workers and piece workers covered by this Agreement, are to work not more than seven (7) hours

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

in any one (1) days, nor more than thirty-five (35) hours in any one (1) week, on a five (5) day week basis, from Monday to Friday, both inclusive; that the hourly wage rate for overtime pay for week workers shall be time and one-half ($1\frac{1}{2}$). All requests to work overtime must be made by the employer to the Association; the Association must arrange such overtime with the Union. Emergency overtime requests must be made at least three (3) hours prior to the time such overtime is needed in order to establish the merit of such emergency request.

4A. All overtime requests for extended periods must be made at least forty-eight (48) hours prior to the time such overtime work is needed; upon investigation by the Union and the Association, such overtime may be granted. Should there be a disagreement between the Union and the Association over the working of overtime, the matter shall be referred to the Impartial Chairman for settlement.

4B. All overtime work shall not exceed five (5) hours per week per worker and no more than one (1) hour per day per worker. It is the standing policy of the Industry to avoid Saturday work, and only in extraordinary cases may Saturday work be granted. With this understanding, the past market policy in this regard will be continued. However, a committee of two (2) members of the Union, unaccompanied by any representatives of the Association, shall be permitted to visit the shops of mem-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

bers of the Association, wherever located, before and after regular working hours of any day and on Saturdays, Sundays and Holidays, if the shop is open, or if any person is on the premises, for the purpose of ascertaining whether the hour and work-day provisions of this agreement are being fully complied with.

5. Daily Working Schedule: A definite starting and closing time shall be agreed upon by the workers of the shop, and the employer; such hours of work shall be posted in a prominent place in each factory. Copies of such posted notices shall be mailed to both the Union and the Association; there shall be no change in such starting and closing time without the joint agreement of the employer and the Union acting on behalf of the workers in each shop.

5A. It is also agreed that each employee shall receive one (1) hour for lunch; if, however, the majority of the employees of a given shop elect to reduce their lunch period to not less than forty-five (45) minutes, they shall be so permitted.

6. It is agreed that each employer shall keep an accurate record of the time put in by each worker of his hours of duty.

7. Higher and Lower-Priced Garments. The Association and the Union agree that there is one general class of dresses manufactured by the members of the Association; this general class is designated as the "higher-price dresses;" the phrase

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

“higher-priced dresses” shall refer to a garment whose sale price is above three dollars and seventy-five cents (\$3.75); the employees in the crafts enumerated below, shall work on a piece work basis; they shall receive a guaranteed minimum wage of not less than the following:

Higher-Priced Dresses

Operators	75 cents per hour
Finishers	55 cents per hour
Pressers	\$1.00 per hour

7A. Underpressers. Hourly wage rates of the Underpressers are to be fixed by mutual agreement with the Pressers in each shop. If they fail to agree, the Union is to decide the percentage of the Pressers' collective wages to be paid to the Underpressers.

7B. All workers enumerated below, shall work by the week and shall receive a guaranteed minimum wage of not less than the following:

Higher-Priced Dresses

Cutters	\$40.00 per week
Sample Makers	\$25.00 per week
Special Machine Operators	\$20.00 per week
Drapers	\$22.00 per week
Examiners	\$18.00 per week
Cleaners and Pinkers.....	\$17.00 per week
Assorters and Floor Girls....	\$17.00 per week

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

The following general wage increases shall be effective as of July 1, 1941:

1. All cutters to receive a flat increase of three dollars (\$3.00) with this exception, that Cutter pay increases granted between July 1, 1941 and the date of the signing of this agreement shall be credited when computing above increase.

2. Pressers are to receive an increase of ten per cent (10%) with this exception that where advances have been granted, between July 1, 1941 and the date of the signing of this Agreement, on piece rate settlements, same shall be credited when computing above increase.

3. All other crafts are to receive a fifteen percent (15%) increase with this exception that where increases have been granted between July 1, 1941 and the date of the signing of this agreement, same shall be credited in computing above increase.

8. Time Workers. All workers employed as Cutters, Sample Makers, Cleaners, Pinkers, Drapers, Special Machine Operators, Assorters, and Floor Girls, must be employed on the week work basis.

8A. Workers taken from piecework and given day work shall be paid at the rate of their hourly earnings but not less than the stipulated scale.

8B. Apprentices. To enable newcomers to the Industry to obtain full technical knowledge of the Industry and at the same time to provide a measure of security for them during their apprentice-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

ship it is recommended that a committee of manufacturers and Union representatives shall be designated to study and recommend the best methods to be adopted by the Industry on this problem.

9. Employers' Work. No more than (1) one member of each employer firm shall be permitted to do any manufacturing work; and he shall work no more than the regular hours stipulated in this agreement. If any members of the firm or foremen shall violate this provision, the firm shall become liable to and pay to the Union a sum equal to the minimum weekly wage scale of such craft for each violation.

10. Piece Rate Settlement and Price Committee. For the purpose of establishing piece work prices on new garments, there shall be a price committee of the various crafts; prices agreed upon shall be reduced to writing and signed by the employer, and said price committee; said price committee shall consist of not more than three (3) persons and the shop chairman or chairlady, where such shop has fifty (50) employees or less; such committee shall consist of not more than four (4) persons and the shop chairman or chairlady, where the shop has more than fifty (50) employees; each shop price committee shall be elected by the workers of each craft in each shop, and election to such price committee shall be held at the regular shop meeting called by the Union.

10A. Notwithstanding the minimums herein set

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)
for piece workers, when, after determination by the Impartial Chairman, it is found that a particular employee is not earning the minimum, then the Impartial Chairman may permit the particular employee to work below the minimum. This provision is applicable only when the Impartial Chairman determines that the employer has fixed fair piece work prices.

11. Duties of Shop Chairman. In each shop there shall be a shop chairman or shop chairlady elected by the workers of each shop, whose function shall be to maintain harmony amongst the employees, and to endeavor to adjust with the employer the complaints of the employees.

11A. To increase harmony and better relationship it is agreed that each employer shall, upon written request of the Union, deduct dues and assessments for the Union from wages due employees each week, and each employer shall pay the same to a designated representative of the Union.

12. No Interruptions During Regular Working Hours. There shall be no shop meetings or cessation of work during regular working hours, and all shop chairmen and shop chairladies shall perform the regular duties of their particular craft.

13. Procedure in Settling Piece Rates. Piece-work prices shall be settled by the price committee and each employer in the Association, in conferences which are to take place outside of the regular working hours of the shop, and at such times as are

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

agreed upon by the committee and the employer; such piece work prices so fixed and agreed upon shall be reduced to writing, and copies of such writing shall be delivered to each party and to the office of the Union and shall be final and binding upon both; whenever piecework prices cannot be agreed upon by the Committee and the employer, such dispute, in the first instance, shall be referred to a representative of the Union and the Association; if such representatives fail to agree, the matter shall be referred within forty-eight (48) hours to the Impartial Chairman who shall have the right to take such evidence and order such tests to be made, procure such data, take *take* such other steps as in his discretion may be necessary in order to reach a just and fair conclusion as to such dispute, and the decision then made by the Impartial Chairman shall be binding upon all parties hereto; pending determination of such dispute, however, all garments shall be put in production with the understanding that the piece work price thereon shall be settled and fixed before the next ensuing pay day; workers shall not be required to make garments if not settled as stipulated above. In case piece workers do not make the minimum for two weeks, prices are to be resettled.

13A. In order to expedite matters in the Impartial Chairman's office, the Union and the Association shall each select three (3) price adjusters whose names shall be submitted to the Impartial Chair-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

man's office; the Impartial Chairman's Office shall select one (1) from each list to examine the garments in dispute and submit their price recommendations to the Impartial Chairman; after the Impartial Chairman has received the recommendations he shall then set a price on the garments.

13B. Prices settled on garments shall be understood to mean garments made in lots. This understanding should be considered in compensating for garments produced singly.

13C. For duplicates, pieceworkers shall be paid at their established average hourly piece rate earning or 50% in addition to the settled price at the option of the employer.

14. Equal Division of Work. For the purpose of equal division of work, a slack season shall be defined as a period when in two (2) or more consecutive weeks there is not sufficient work to provide full-time employment for all the workers of the shop; during such slack season whenever there is insufficient work for all the employees in the various crafts, the available work shall be divided equally amongst the employees in each craft having the ability to do the work.

15. Basis of Division of Work. The phrase, "the available work shall be divided equally" used in the foregoing paragraph, shall mean that the work shall be so divided as to cause an equal division of wages for each employee in each specific craft.

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

16. At Least One-Half Day's Work. Whenever workers are called in for work, they are to be given at least three and one-half ($3\frac{1}{2}$) hours of work, or they are to be compensated on that basis.

17. Sample and Duplicate Makers Selected by Employer. It is further agreed that the employer shall have the right to select such workers as he may elect, to make samples and duplicate; provided, however, that during the slack season hereabove described, the time spent by the worker so selected in making samples and duplicates shall be included in computing the equal division of available work.

18. Damage Done by Worker. The employer shall not charge any worker for any damage done to material during operations on garments. This paragraph in no sense, however, shall protect anyone that causes damage to garments maliciously or wilfully.

19. Trial Period and Discharge of Worker. The employer shall have absolute right to discharge any employee within a period of ten (10) working days from date of beginning of employment. This right shall be absolute and not subject to review. After such trial period no workers shall be discharged for any cause except incompetency, misconduct, soldiering on the job, insubordination in the performance of his duties, and breach of reasonable rules jointly established. The Union, however, shall have the right to review any such discharge before the

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

Impartial Chairman. All complaints involving discharge shall take precedence over all other complaints and must be adjusted within two (2) working days.

19A. *Absence From Work Without Leave.* In the event any employee is voluntarily absent from the place of business of any member of the Association for five (5) or more consecutive business days, except as necessitated by proven sickness of such employee, then the employer shall be under no obligation to take back such employee, and the employment shall be deemed terminated, provided however, that if such employee shall give notice of an intention to remain away from the place of business of his employer and obtain the consent of said employer to remain away for a specified period, such absence shall not be deemed a termination of the employment or ground for discharge. No employer upon receiving notice from an employee of an intention to absent himself from the place of business for a specified period, shall refuse to give his consent to such absence for a period of five (5) days or less, unless the employer and the Union shall agree that special circumstances exist which gives the right to the employer to refuse such consent. If any employee shall accept or do work for any person, firm or corporation other than his regular employer, such acceptance or doing of work shall give the employer the right to discharge said employee.

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

19B. Military or Civilian Service. Workers who volunteer for or are drafted into military or civilian service of the United States of America, shall be deemed to be on a leave of absence and shall be reinstated to their former jobs, provided, they are enjoying reasonably good health, which will enable them to perform their work normally; and providing also, that they apply for their jobs within two (2) months after their discharge from such military or civilian service. However, if the State of California should provide by statute a longer period of time then two (2) months, the time herein specified shall conform to the California statute. Workers who are employed in their places shall be considered temporary workers, unless the firm continues their employment after the workers, in whose place they were employed, return to work. Workers who are to take such temporary jobs shall be so informed by the employer and the Union.

19C. Reorganization. The employer shall be free to reorganize his shop in good faith by giving notice in writing to the Union. It is understood and agreed that a reorganization as contemplated in this agreement means a fundamental change in the mode of operation or curtailment of production as necessitated for financial reasons or a change in personnel required by the making of different class of garments or by the change in the methods of factory operation. In the event such reorganization results in a decrease in personnel the workers who are to

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

retain their employment shall be chosen by lot. In order that a worker's ability average may be retained, the workers, drawing lots, will be designated into fast, average and slow worker groups according to their past earnings record as shown by the firm's payrolls. Lots will then be drawn by each group separately to determine which workers from each group shall be retained. Reorganization shall only be considered in the beginning or at the end of the season.

20. **Legal Holidays.** The following legal holidays shall be observed: Decoration Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day. Week workers shall be paid for those holidays if they fall within the working week, workers may also refrain from working on May Day, New Year's Day, and one-half ($1\frac{1}{2}$) day on Election Day, but without pay. During any week in which a legal holiday occurs, employees working less than a full week shall be paid pro-rata the hours worked.

21. **Religious Holidays.** The members of the Dress Association of Los Angeles shall be given the privilege to make up the loss of time for religious holidays, in such manner as decided by the Impartial Chairman, by making arrangements with a joint committee of the Association and the Union preceding the holiday. Such time shall be considered regular time.

22. **Fixed Pay Day.** Each employer shall estab-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

lish a regular weekly pay day which must be not later than the Wednesday following the work week, and all wages must be paid on that day.

23. No Home Work. No home work is to be permitted.

24. No Contractors Inside Shops. It is agreed that all workers employed in the shop of any employer-member of the Association, are to be directly employed by the firm and that no contractors are to be employed in the shop.

25. New Association Members Subject to Union's Acceptance. The Union further agrees not to enter into contractual relation, orally or in writing, with any member who has been suspended, expelled or has resigned from the Association, until such individual, firm, or corporation has made satisfactory settlement with the Association for any legitimate claim it has against it. The Association agrees not to admit any member until any legitimate claim of the Union against him has been satisfactorily settled.

26. Contracts With Non-Association Firms. Contracts made by the Union with employers who are not signatories to this collective agreement shall not extend for a period longer than this agreement and shall be controlled by this exact agreement.

27. Obligations of Firms Who Sign Individual Contracts. The Union shall require all employers who sign this agreement to contribute their proper

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

share, as established by the Association and the Union, for the maintenance of the collective machinery provided for by this agreement and shall cause all non-member firms, which may sign this contract, to deposit with the Union a security of cash or its acceptable equivalent in an amount which is sufficiently substantial to guarantee future compliance.

28. *Private Contracts Between Employer and Employee Prohibited:* The Association agrees that its members will not enter into any agreement with their employees, and the Union agrees that its members will likewise not enter into any private agreement with their employers as to wages, hours, and working conditions, nor will such private agreements be sanctioned by either the Union or the Association. However, should the Union or the Association find that a private deal was made by any member of the Union and a member of the Association, both parties shall be brought to trial before their respective organizations, and if found guilty suspended or otherwise dealt with. In no event shall this paragraph be construed to mean that the worker or workers violating this paragraph should be deprived of tenure of employment unless the Union reaches such conclusion upon trial, or upon the decision of the Impartial Chairman in the event the Association desires the discharge of such worker or workers.

29. *Work Given to Contractors.* If and when

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

the Union and the Association find it necessary for the employer to employ a contractor, the following conditions are to be observed.

(a) The Contractors shall pay his employees the same prices as are settled for the inside employees.

(b) The chairman of the Contractor's shop shall participate in the settlement of prices of the inside employees.

(c) A fixed overhead shall be added to the fixed prices for the contractor's shop.

(d) All work shall be equally divided in the slow season between the inside shop and the contractor's shop in a percentage proportion to the work previously given the contractor out of the firm's total seasonal production.

(e) Manufacturers shall register all contractors before sending out work.

29A. Responsibility for Wages. Each member of the Association shall be responsible to the members of the Union for the payment of their wages for work done by them on garments of such Association member, made by contractors, provided that such liability shall be limited to wages for one full week and two days in each instance, and provided further that notice of default is given to the Association within three (3) days after such default.

29B. Striking Shops. No member of the Association shall order or purchase garments from any contractor whose workers are on strike, nor shall

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

any member of the Association make or cause to be made any work for any person against whom the Union has declared a strike, until such strike in each case has been fully settled.

29C. Accessories. Members of the Association who cause to be manufactured covered buttons, pleating and tucking on garments, shall deal only with such firms as are in contractual relations with the Union.

29D. Concerning Provisions 29 and 29C, it is understood and agreed that where compliance works particular hardships such as deliveries, quality requirements, etc., special exemptions may be granted. In such cases the regular impartial machinery procedure must be followed to secure such exemption.

29E. Labels. To effectuate the purpose of this Agreement as set forth in the Preamble, all garments manufactured or distributed by the members of the Association shall bear a label adopted by the Union and shall be attached to each garment. The Association agrees to the principle expressed in this Provision, and it is recommended that within thirty (30) days from the date of the signing of this Agreement, that an Industry Committee, composed equally of Union and Manufacturers' Representatives, under the guidance of the Impartial Chairman, shall be appointed and shall explore the possibilities of adopting this provision as an indus-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

try practice; shall set up proper procedure to administer such a provision, and shall recommend such other procedure as in the Committee's judgement, may seem practical.

30. Visitation of Shop by Union Agent. When authorized by the Impartial Chairman, a duly authorized representative of the Union, accompanied by a representative of the Association, shall have access to the factory, to ascertain whether the agreement is lived up to.

31. No Stoppage or Lockout. During the term of this agreement there shall be no general or individual strike, lockout, walkout, shop strikes or shop stoppage.

32. Policy Committee. A policy committee shall be formed comprised of two (2) members of the Union and two (2) members of the Association; and shall have the following duty: To inquire into any exceptional situation that may arise which is not covered by the specific provisions of this contract.

32A. The policy committee shall make written recommendation to the Joint Board of the Union and the Executive Board of the Association, each of which shall pass upon such recommendations of the policy committee; in the event there shall be any disagreement between the Joint Board of the Union and the Executive Board of the Association such disagreement shall be resolved by the Impartial

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

Chairman whose decision shall be binding upon both parties.

32B. Nothing in this paragraph contained, however, shall be construed to give such policy committee any authority to pass upon any rules, regulations policies, or by-laws of the Union and the Association or to give said policy committee, or the Joint Board of the Union, or the Executive Board of the Association, authority to pass upon any problem which is specifically covered by the terms of this agreement.

33. New Association Members. After the signing of this agreement, before a member shall be admitted to the Association, the Union shall immediately be informed in writing, of the application for membership. If a strike or dispute shall be pending between the applicant and the Union at that time, or if the Union has any reasonable objections to the applicant becoming a member of the Association, the Union shall give the Association, within ten (10) days after the receipt of such notice, a written statement containing full particulars of the matters in dispute and the Association shall not admit such applicant until such dispute is adjusted. No strike shall be called by the Union against the firm applying during the ten (10) days immediately following the said firm's application for membership.

34. Settling Disputes. All complaints and controversies or grievances (except price settlements

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

which shall be taken up in the manner herein provided for), arising between the parties hereto or between an employer, and any employee hereunder during the life of this agreement, which shall not have been adjusted by the shop chairman or chair-lady with the employer, shall be set forth in writing and jointly investigated by the manager of the Association and by the manager of the Union or their deputies. When such representatives shall have arrived at a decision it shall be binding upon the parties hereto. Should such representatives fail to agree, the matter shall be then referred by them to the Impartial Chairman herein provided for. The Impartial Chairman shall have an advisory committee of four (4) members, two (2) of whom shall be elected by the Union, and two (2) by the Association; said advisory committee shall assist at the hearing of all complaints before the Impartial Chairman.

35. Impartial Chairman. Both parties hereto repose full faith and confidence in Anthony G. O'Rourke; said Anthony G. O'Rourke is hereby appointed the Impartial Chairman and final arbiter hereunder; said Impartial Chairman shall serve during the period of this agreement; all complaints, grievances, controversies, disputes, questions of interpretation of this agreement, and all other differences between the parties hereto, shall be heard and determined by the Impartial Chairman, if the same cannot, in the first instance, be otherwise dis-

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

posed of under the provisions hereof by the parties hereto.

35A. In the event the said Anthony G. O'Rourke shall for any cause be unable or unwilling to act, then the parties hereto shall choose his successor or successors and said successor and/or successors shall have duties, powers, and rights similar to those conferred upon the said Anthony G. O'Rourke. In the event the parties hereto cannot agree on said successor and/or successors within thirty (30) days, either party may apply to the Mayor of the City of Los Angeles or to the Governor of the State of California, or to the American Arbitration Association for the appointment of said successor and/or successors.

36. Impartial Chairman's Fee. The expense of maintaining the office of an Impartial Chairman and such fees as may be agreed upon to be paid to him shall be paid jointly by both parties hereto. Provided, however, that the fees agreed upon shall in no sense be construed as an agreement to pay him a fixed fee during the life of this contract, but shall be subject to periodic adjustments based upon the financial ability of the contracting parties.

37. Impartial Chairman's Duties. The Impartial Chairman shall also have the right to sit in judgment on the complaints that pieceworkers in any shop are not earning the minimum rates as provided herein. The manufacturers shall submit

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)
to the Impartial Chairman's office copies of the complete payrolls each week so that the Impartial Chairman will be informed as to conditions in the different shops. The Impartial Chairman may also consider and determine the complaint of the Association that either the piece-rates in any non-member shop having contractual relations with the Union are too low, or that the minimums in this agreement provided for are not earned by workers in such non-member shops. Upon hearing such complaints he may render any decision he deems fair and just, and his decision shall then supersede any decision on the settling of piece rates.

38. At the request of the Union, the Impartial Chairman, or his deputies shall have the right to examine the books of a firm to establish the facts of complaints that may be made against that particular firm.

39. The Impartial Chairman shall, within seventy-two (72) hours set a date for hearings, notify the parties in any manner deemed necessary by him, and he will for such purpose recognize a representative of the Union, and a representative of the Association, as the parties to whom notice will be sufficient in each case; he shall have the authority to call for any evidence, written or oral. The parties affected may present any evidence, written or oral, but the same shall only be on matters pertinent to the complaint.

40. The Impartial Chairman shall have power

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

to make and enter any order, ruling, or decree which in his discretion appears to be just and reasonable, and having due regard for justice and equity in each case; such order, ruling or decree shall not, however, be in conflict with the express provisions of this agreement.

41. Discharge and Compensation. With respect to any discharge case which is brought before the Impartial Chairman in which he decides to reinstate the worker, he may, in his discretion, award the worker compensation for loss of time either in part or in full, for the time lost. Should a discharged worker be reinstated through the mediation of the representatives of the Association and the Union and the matter of compensation for loss of time is disputed, it shall be referred to the Impartial Chairman and he may, in his discretion, award the worker compensation as herein provided for.

42. Hearings—New Evidence. If any defense, justification or new matters is to be presented at the hearing, such defense, justification or new matters must be reduced to writing and submitted to the complainant sufficiently in advance of the hearing so as to avoid surprise and enable them to prepare themselves.

42A. Where the complaint appears vague or trifling, the Impartial Chairman may, upon request, or of his own motion, direct that it be made more specific before proceeding.

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

42B. Hearings—Precedure. All evidence submitted at the hearing must be kept within the definite points raised by the written complaint and reply. No outside matters may be pleaded unless agreed to by all parties.

43. The Impartial Chairman may interpret this agreement but shall have no authority to pass upon any rules, regulations, policies, or by-laws of the Union and the Association, nor authority to alter or modify this agreement or any provisions hereof.

44. Impartial Chairman's Decision Final. The Impartial Chairman's decision shall be deemed and be accepted as final and binding upon all parties affected by such decisions and his decisions shall be carried into effect, respectively, by every person, firm member, employee, local, union or association named, and the failure to carry such decision into effect, shall be deemed a violation of this agreement. Each case brought to the Impartial Chairman shall be considered on its own merits and this agreement shall constitute the basis upon which each decision shall be rendered. No decision shall be used as a precedent for any subsequent case.

44A. The Association and the Union hereby specifically agree for themselves and their members, that the powers now granted to the Impartial Chairman shall be deemed to include, among the other powers herein specifically granted, such other and additional powers as may be granted to arbiters, pursuant to the provisions of Section 1280 and to

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

1292, inclusive of the Code of Civil Procedure of the State of California. Both parties agree that a judgment of the Superior Court of the State of California, in and for the County of Los Angeles, may be rendered upon any decision or award made by said Impartial Chairman.

45. Modification of Agreement. Modification of this agreement can only be effected at a conference called for such purpose by the parties, and ratified in writing by their respective organizations.

45A. Should the Cost of Living Index for Los Angeles, as maintained by the U. S. Department of Labor Bureau of Labor Statistics, rise five per cent (5%) above the Index for July 15, 1941, the Union may ask for the opening of this agreement to re-adjust the minimum wage scales herein provided.

46. Expiration of Agreement. This agreement shall remain in force until June 30, 1943; it shall continue thereafter until June 30th of each succeeding year, subject only to the right of either party to this Agreement to then terminate it by giving the other party a notice in writing at least sixty (60) days before such expiration date of their intention to terminate this agreement. Either party may, upon similar notice, during such periods, suggest amendments or reconsideration of terms of the agreement, as a whole, and all such amendments or changes which are mutually agreed upon within said sixty (60) day period shall become effective at the next yearly period.

(Testimony of George Wishnak.)

Respondent's Exhibit No. 6—(Continued)

In Witness Whereof, the parties hereto have caused these presents to be executed by their respective offices and members, and by the members themselves, the day and year first above written.

For: DRESS ASSOCIATION OF
LOS ANGELES

(Signed) MURRAY GOLDSTEIN,
Vice-President

(Signed) J. MARCUS,
Executive Secretary

(Signed) I. TEITELBAUM,
Secretary-Treasurer

For: INTERNATIONAL LADIES'
GARMENT WORKERS'
UNION, JOINT BOARD OF
LOS ANGELES, CALIF.,
LOCALS 96, 97, 84 and 65.

(Signed) LOUIS LEVY

(Signed) GEORGE WISHNAK

(Signed) ETHEL MCGEE

(Signed) ROSE HARRINGTON

(Signed) ABE LANKENSON

Trial Examiner Erickson: All exhibits have to be filed in duplicate. I don't need an extra copy for myself.

Q. (By Mr. Shapiro) Whenever the Interna-

(Testimony of George Wishnak.)

tional Ladies' Garment Workers' Union negotiates with employers, or manufacturers in the ladies garment industry in the City of Los Angeles, it does so on behalf of the four locals referred to in this agreement, does it not? That is the cutters, operators, pressers, and cloak operators?

Mr. Nicoson: Object to that as assuming something not in evidence.

The Witness: No, sir.

Mr. Nicoson: There is nothing to show in this exhibit that this represents all the cloak, dress or other manufacturers in the city of Los Angeles.

Mr. Sokol: I have one other technical objection. May I sound it?

Trial Examiner Erickson: Yes.

Mr. Sokol: Simply this: The question was leading. This is his witness now and if he wants to ask him how the [748] union negotiates, that is all right.

Trial Examiner Erickson: I can't say that he is his witness.

Mr. Sokol: He called him.

Trial Examiner Erickson: I will say if he knows the answer to the question, I am going to let him answer it.

The Witness: We negotiated an agreement for any of the workers that ask for an agreement. I personally represent all the workers in any industry, as long as it is needle trades in the ladies garment industry. I have made cloak makers agreements. I have negotiated the knit goods agreement in San

(Testimony of George Wishnak.)

Francisco. I have signed agreements in Seattle, Washington, and in other places.

However, any local has a right to come to me and say, "We want you to go and negotiate an agreement for our members."

Q. (By Mr. Shapiro) All right, you have answered my question. Now, who——

Mr. Sokol: That is for members of the local?

The Witness: Members of a local union.

Q. (By Mr. Shapiro) Who are the members of the Dress Association of Los Angeles?

A. The manufacturers——

Mr. Nicoson: I object to that.

Mr. Shapiro: Why?

Mr. Nicoson: Excuse me. [749]

Mr. Sokol: The question is as to Lettie Lee members. That is the sole question.

Mr. Nicoson: I withdraw the objection.

Trial Examiner Erickson: All right, proceed.

The Witness: Members——what is the question again?

Q. (By Mr. Shapiro) Who are the members of the Dress Association of Los Angeles?

A. Dress manufacturers who have signed a contract with the union.

Q. How many such dress manufacturers are there? A. How many we have?

Q. Yes, who have signed contracts with the union, and who are members of the Dress Association?

Mr. Nicoson: I object to that.

(Testimony of George Wishnak.)

Trial Examiner Erickson: I will sustain the objection.

Mr. Shapiro: May I state my purpose, your Honor?

Trial Examiner Erickson: Yes; you may.

Mr. Shapiro: My purpose is, I want to show how many manufacturers in the city of Los Angeles are members of the Association.

Trial Examiner Erickson: You mean signatories to that contract?

Mr. Shapiro: This agreement does not provide for signatures of the members of the Association. It is executed by the Association. [750]

Trial Examiner Erickson: What proof do you have as to their connection with that contract?

Mr. Shapiro: That is what I want to establish by this witness. I want to ask him how many members there are of this Dress Association. Let's assume he will say there are ten members, or 20 or 100 who are members of this Association. They are parties to this contract, being members.

Trial Examiner Erickson: I can't follow that. I heard the testimony here the other day about a certain \$5,000 forfeiture agreement that was talked about by certain people.

Mr. Shapiro: This is a signed contract, your Honor.

Trial Examiner Erickson: All right. The signatures will show who are members then.

Mr. Shapiro: Would your Honor care to examine this?

(Testimony of George Wishnak.)

Trial Examiner Erickson: It is in evidence. I admitted it here a little while ago.

Mr. Shapiro: All right. It is in evidence.

Trial Examiner Erickson: Yes.

Mr. Shapiro: Now, I think that it is highly material for the Examiner, and the Board, to know who the Dress Association of Los Angeles is. I don't care about the names of the individuals.

Trial Examiner Erickson: You mean the contract is signed by the Dress Association of Los Angeles?

Mr. Shapiro: Yes. [751]

Trial Examiner Erickson: And you want the witness here to tell who are the members of the Dress Association?

Mr. Shapiro: If he knows, yes.

Trial Examiner Erickson: All right. I will let him answer it.

Mr. Nicoson: That wasn't what he asked him.

Mr. Shapiro: What?

Mr. Nicoson: He asked him to tell with whom he had contracts in Los Angeles.

Trial Examiner Erickson: Let him answer my question. Go ahead.

The Witness: Now, I don't know what the question is.

Q. (By Mr. Shapiro) The question that I think the Examiner asked you was—— A. Yes.

Q. ——who are the members of the Dress Association of Los Angeles?

(Testimony of George Wishnak.)

A. The dress manufacturers and some sports-wear manufacturers.

Q. Do you know how many dress manufacturers are members?

A. I couldn't tell you exactly how many are members of the Dress Association, but I do know that the figure is about 30.

Q. About 30? A. Yes.

Q. That is the approximate total membership of the [752] Association? A. Yes.

Q. Now, in negotiating and signing this agreement between the Dress Association of Los Angeles and its membership, and the International Ladies' Garment Workers' Union, the union through its joint board, acts for and on behalf of Local 96—

Mr. Sokol: The contract speaks for itself.

Trial Examiner Erickson: Let the question be asked first, please.

Mr. Shapiro: Would you read the question as far as I have gone?

(The record was read.)

Q. (By Mr. Shapiro) (Continuing)—97, 84, and 65 being the operators, pressers, cutters, and cloak operators, respectively, did it not?

A. No.

Mr. Shapiro: That is all.

Cross Examination

By Mr. Sokol:

Q. With respect to manufacturers, who are not members of the Dress Association, how do you deal with them?

(Testimony of George Wishnak.)

A. We sign individual agreements.

Q. Does the Cutters Local itself sign the agreements? A. Yes. [753]

Q. For the cutters only? A. Yes.

Q. With respect to Mr. Bothman, do you know if he has ever been a member of the Dress Association? A. No, sir.

Mr. Shapiro: It is stipulated he is not and has not been.

Mr. Sokol: Yes; and also he has refused to sign any union contracts. Will you stipulate to that?

Mr. Shapiro: I won't.

Mr. Sokol: Will you stipulate to that contract that he executed some time ago?

Mr. Shapiro: I will stipulate to nothing except what I have just stipulated to. I am not stipulating to every issue in this lawsuit.

Mr. Sokol: Very good.

The Witness: May I make a statement?

Q. (By Mr. Sokol) With respect to the negotiations? A. Yes.

Q. I think you are free to do that. May he, Mr. Examiner?

Trial Examiner Erickson: Yes, he may.

The Witness: When we negotiate an agreement with a manufacturer, we usually try to get him to negotiate for all the workers in the factory, if possible. If, however, one of the locals organizes a majority of that unit in the plant, we negotiate an agreement for that particular unit, [754] which has enlisted the majority of the members in the plant.

(Testimony of George Wishnak.)

Mr. Shapiro: Are you through, Mr. Sokol?

Mr. Sokol: Yes.

Mr. Shapiro: Do you have any questions, Mr. Nicoson?

Mr. Nicoson: No questions.

Redirect Examination

By Mr. Shapiro:

Q. Did I understand you correctly, Mr. Wishnak, to state that those manufacturers, or employers, who are not members of the Association, you deal with individually? A. Yes.

Q. For any particular local?

A. Craft, yes.

Q. You are positive of that? A. Yes.

Q. Is there anything in this agreement that covers the right of the union to execute separate contracts with employer manufacturers, not members of the Association?

Mr. Nicoson: I object to that. The contract is the best evidence.

Mr. Shapiro: I want to know how much he knows about it.

Trial Examiner Erickson: Yes. I haven't had time to read that contract.

Mr. Nicoson: I don't really know what is in there.

Mr. Shapiro: It is right there before you. [755]

Mr. Nicoson: Well, you confront a man here with a 20-page document and ask him the technical details of it. Manifestly, that is unfair.

(Testimony of George Wishnak.)

Trial Examiner Erickson: Will you please give it to Mr. Wishnak?

Mr. Shapiro: Yes. Of course, you showed Mr. Bothman a transcript of the Senate Investigation Proceedings, and expected him to be able to answer your questions.

The Witness: Well, I wouldn't deny what I know without reading.

Q. (By Mr. Shapiro) What do you know without reading?

A. There is such a clause.

Q. I will direct your attention to paragraph 26 of the contract, reading as follows—

Mr. Sokol: Just a minute. Does your Honor want the record filled with quotations?

Trial Examiner Erickson: Sure.

Mr. Sokol: Well, I would like the equal opportunity.

Trial Examiner Erickson: Did you want to make an objection?

Mr. Sokol: Well, it was simply not to take up the record with the quotations.

Mr. Shapiro: It is three lines long.

Trial Examiner Erickson: Go ahead.

Q. (By Mr. Shapiro) "Contracts made by the Union, with [756] employers who are not signatory to this collective agreement, shall not extend for a period longer than this agreement, and shall be controlled by this exact agreement." Is that the provision in the contract that you refer to?

(Testimony of George Wishnak.)

A. Yes. But this provision has been made eight years ago.

Q. Now, just a minute.

A. I want to explain.

Q. What is the date of this contract?

Mr. Sokol: Pardon me. Mr. Examiner, in the first place, the respondent can't hide behind that contract for its unfair labor practices. I mean, why argue about the matter?

Mr. Shapiro: There is more in this case than the alleged unfair labor practices.

Trial Examiner Erickson: The objection is overruled. Go ahead.

Q. (By Mr. Shapiro) What is the date of this contract, Mr. Wishnak?

A. You can read it.

Q. Yes. It is the 8th of August, 1941?

A. That is right.

Q. So what did you mean by your statement that that provision is eight years old?

A. Well, I will agree with you sooner than your witness will agree with my lawyer.

Q. And you agree with me that this is the contract, as it [757] existed, and that the contract was as of August 8, 1941?

A. Yes. I simply wanted to explain this clause to you.

Trial Examiner Erickson: I want all parties to know that the history of bargaining is one of the most important features.

Mr. Sokol: There hasn't been any history of

(Testimony of George Wishnak.)

bargaining with this respondent. That is the point I want to make. Why should the issue be beclouded by a lot of facts, which is beclouding the whole issue, as far as I am concerned.

Trial Examiner Erickson: The question of what happened in the industry is as important in the determination of a unit, as what happens in the particular plant. And I am sure that you have argued that many times before the Board.

Mr. Sokol: Yes, but specifically, the history of bargaining at this plant is important. The salient feature is that this company has dealt with the cutters, the men cutters alone.

Trial Examiner Erickson: Yes. And a man has a right to make up his mind by the history of bargaining in the industry, as to what he should do in his own particular business.

Mr. Sokol: That is assuming he joins with the rest of the industry.

Trial Examiner Erickson: It doesn't make any difference to me whether he does or not. I am here listening to the facts in this case, and I think I was frank to you and to [758] Mr. Shapiro this morning when I told both of you that we had a unit here that was a hard question to solve. And the only way it can be solved is to get all of the facts; and if what happens in other parts of the industry enlightens me in the determination of the unit in this case, I want those facts.

Mr. Sokol: I didn't object to the exhibit going in. That is not the point.

(Testimony of George Wishnak.)

Trial Examiner Erickson: Proceed then.

Recross Examination

By Mr. Nicoson:

Q. Mr. Wishnak, will you consult that exhibit that has just been introduced here, which is Respondent's Exhibit 6, and state if there is anything in there which prohibits you from entering into an independent contract with a dress manufacturer in Los Angeles, who is not a member of this Association? A. Certainly not.

Mr. Nicoson: That is all. Thank you very much.

Redirect Examination

By Mr. Shapiro:

Q. Is there any provision in that contract which permits you to enter into an agreement with a manufacturer, who is not a member of the Association, on terms other than and different than the terms of this agreement?

A. This only has to do with the scale of wages and conditions provided in this agreement.

Q. That is your conclusion, isn't it? [759]

A. These are the facts.

Mr. Nicoson: You can't impeach your own witness.

Mr. Shapiro: I am not bound by what he says and neither is the Board.

Q. (By Mr. Shapiro) That is your conclusion of what the language of paragraph 26 means; isn't it?

A. No. This is a fact, not a conclusion.

(Testimony of George Wishnak.)

Q. In your mind?

A. No, in everybody's mind. If you will ask the manager of the Association, he will tell you the same thing.

Mr. Shapiro: All right. I guess that is what the Board is here to find anyway.

Q. (By Trial Examiner Erickson) Mr. Wishnak. A. Yes.

Q. Whether these boys who are named in the complaint, joined the union prior to July 21st, they all of them signed cards? A. Yes.

Q. On July 21st? A. Yes.

Q. Now, prior to that time, your union had in mind that you were going to strike the garment makers industry; is that right? A. Yes.

Q. What part did these six boys, or we will call them the cutters of Lettie Lee, Inc., have in the determination of your decision to call a strike, which, as I understand it, was a [760] secret date?

A. This is not a question that can be answered yes or no. If you will permit me to tell you how this came about.

Trial Examiner Erickson: Read the question, please, and you may answer it as you like.

(The question was read.)

The Witness: The fact that they have agreed that they will abide by the decision of the union about six weeks before they signed the cards; and then when it was reported that they already have signed cards, so we decided to call them out on strike.

(Testimony of George Wishnak.)

Q. (By Trial Examiner Erickson) Now, there is testimony here that shortly before the strike, three union agents met with a man by the name of Swartz.

My recollection—and I stand corrected if I am wrong—that is the first indication to Lettie Lee, Inc., that the union was being talked of in the plant. Now, before you answer that I am going to ask that all of the parties either say “yes” or “no”

The Witness: I think I can best answer that.

Mr. Nicoson: I don't agree with that evidence.

Mr. Shapiro: I do. I remember it very distinctly.

Trial Examiner Erickson: Now, what is your remembrance, Mr. Nicoson?

Mr. Nicoson: I understood that Mr. Bothman testified [761] he talked about the union amongst his employees for two or three months before the strike.

Trial Examiner Erickson: I mean real organizational activity.

Mr. Nicoson: You mean a definite knowledge to any officer of the company that there were some people signed up with the union?

Trial Examiner Erickson: That is if the cutters had decided to organize.

Mr. Nicoson: I think that is what the evidence shows.

Trial Examiner Erickson: All right.

The Witness: We started the organization campaign of the dressmakers in Los Angeles, and in

(Testimony of George Wishnak.)

that particular building, that is 719 South Los Angeles, as early as January. We had committees visiting the houses of the workers, talking to them about the union, and also talking to them about the preparation either—for either a settlement, or for a strike in case they will not agree to settlement with the organization.

Q. (By Trial Examiner Erickson) Now, we all know what this 719 building is.

A. Will you permit me to add one word?

Q. We are concerned with one particular company engaged here.

A. In addition to that, every day in the week, or rather [762] once or twice a week, we had special circulars; once a week we had a special newspaper printed, pointing out the firms that are employing non-union help, and talking to the workers' organization, and these newspapers and the leaflets were distributed in the halls of the building almost every day in the week.

And in addition to that, one of their group—rather three of their group consulted with me six weeks before the strike took place. One of them was——

Mr. Shapiro: I don't think we are concerned with what other non-union manufacturers consulted with him.

Trial Examiner Erickson: Yes. Your objection is sustained.

Q. (By Trial Examiner Erickson) My question is: What part did Lettie Lee's employees have

(Testimony of George Wishnak.)

in the decision to call a strike on the 24th of July?

A. Because before that they signed the cards. When it was reported to us that the workers, the cutters had agreed to enforce their demands, we told our representative that unless the cards are signed, we are not going to call them a strike. However, when they did sign, we decided to call them on strike if the firm will not agree to bargain with the union.

Q. I think you testified the other day, Monday I think, that you had previously contacted Lettie Lee? [763] A. Yes.

Q. And asked them to accept certain demands?

A. Yes.

Trial Examiner Erickson: All right. That is all.

Q. (By Mr. Shapiro) I would like to ask you a question, Mr. Wishnak. A. Yes.

Q. These cards were signed on July 21, 1941; is that right?

A. I suppose so, according to the record.

Q. The evidence shows that? A. Yes.

Q. The union had no signed authority from any of these six boys prior to July 21st, did it?

Mr. Nicoson: I object to that. The contrary is shown that they did have.

Trial Examiner Erickson: Well, except for two, yes, you are right.

Mr. Nicoson: All right.

Trial Examiner Erickson: With that qualification, he can answer the question.

(Testimony of George Wishnak.)

The Witness: We had a verbal assurance, but we refused to call any strike until they signed the cards.

Q. (By Mr. Shapiro) And they signed the cards, all of them, on July 21st; is that right?

A. I suppose. They did not sign them in front of me, so I [764] couldn't tell you.

Q. Now, there was a secret committee, whose function it was to determine the exact date, hour, and minute, that the strike was to be called; is that right?

A. There was no secret committee, but there was a committee.

Q. A committee?

A. To determine the date and the hour of the strike.

Q. You were on that committee, weren't you?

A. Yes.

Q. Were any of these boys on that committee?

A. No, sir.

Q. Were they present at any meeting between July 21st, and midnight of July 23rd, when it was decided that the strike would be called on the 24th?

Mr. Nicoson: Objected to as improper direct examination. He had an opportunity to cross examine this witness the other day.

Trial Examiner Erickson: I am surprised that you make that kind of an objection. It is overruled.

Mr. Sokol: Even without that, these employees

(Testimony of George Wishnak.)

don't necessarily have to be on a committee, when they are represented by a bargaining committee.

Trial Examiner Erickson: The objection is overruled.

Will you read the question, Mr. Reporter?

(The question was read.) [765]

Q. (By Mr. Shapiro) Answer the question, "yes" or "no", please.

A. I cannot answer this yes or no, even if directed by the Court, because I will be lying to myself.

Q. Did you discuss with any of these boys whether or not they were in favor of having the strike called on July 24th?

A. Not unless I be permitted to explain my answer, then I will tell you what I did.

Trial Examiner Erickson: You may.

Q. (By Mr. Shapiro) First answer it yes or no.

Trial Examiner Erickson: No; go ahead.

The Witness: The strike committee was divided into representatives of the different locals, and when the local representative came and said that he had so many people qualified, or signed up to go out on a strike, or to enforce demands for bargaining, we took his word for it and we, as the leaders of the strike, did not consult with each worker individually.

Trial Examiner Erickson: We will recess for ten minutes.

(A short recess was taken.) [766]

(Testimony of George Wishnak.)

Trial Examiner Erickson: The proceedings will come to order.

Mr. Shapiro: Mr. Reporter, could you have this photostated and bill us direct. Have your photostater send us the bill and we will pay it. This is Respondent's Exhibit No. 6. You might as well have an extra copy made.

Mr. Nicoson, will you stipulate that the photostatic copies of that agreement may be offered and received in evidence in lieu of the exhibit now marked and in evidence?

Mr. Sokol: So stipulated.

Mr. Nicoson: So stipulated.

Mr. Shapiro: And that this may be withdrawn when the photostats are filed?

Mr. Nicoson: So stipulated.

Mr. Sokol: Yes.

I have a question of Mr. Wishnak.

Recross Examination

Q. (By Mr. Sokol) Mr. Wishnak, I show you page 19347 of Vol. 52 of the Senate Civil Liberties Report, and what purports to have been the members of the Southern California Garment Manufacturers Association, to-wit, Davidson & Studder, Globe Dress Co., Hunt Broughton—

Mr. Shapiro: Just before you read that into the record, I am going to object to counsel reading from this document into the record, unless he establishes a foundation for it. [767]

Trial Examiner Erickson: He has a right to ask the question. He may ask it.

(Testimony of George Wishnak.)

Q. (By Mr. Sokol) (Continuing) —Hunt Broughton & Hunt, Letty Lee, Marjorie Montgomery, William Markowitz, Queen Dress, Mildred Sergeant, and Violet Tatum. Now, I ask you: if any of those concerns ever negotiated with the union since 1936? A. No.

Mr. Shapiro: I will move to strike all of that. I will withdraw the objection.

Mr. Sokol: I will connect it all up. That is all from this witness.

(Witness excused.)

Mr. Sokol: Mr. Bothman, will you resume the stand?

SAM BOTHMAN,

recalled as a witness by and on behalf of the Respondent, having been previously duly sworn, was examined and testified further as follows:

Cross Examination

Q. (By Mr. Sokol) Mr. Bothman, if I tell you that the Senate Civil Liberties report shows that Mr. Nelson Wolfe testified that seven of the members of the Southern California Garment Manufacturers Association signed the agreement providing for penalty of \$5000 if any of them recognized a union, would that refresh your memory as to [768] whether or not you signed the agreement? A. It would not.

Q. It would not? A. No.

(Testimony of Sam Bothman.)

Q. Now, will you tell the Examiner who the members of that Association are?

Mr. Shapiro: I think that has been gone into, your Honor, the other day. It seems to be repetitious to me.

Mr. Sokol: He had no memory of it.

Trial Examiner Erickson: He may answer.

The Witness: Repeat the question.

Trial Examiner Erickson: He wants to know who were the members of the Association so far as you remember.

The Witness: I don't recall.

Q. (By Mr. Sokol) Now, I show you page 19347 of Senate Civil Liberties Report, Vol. 52, and show you what purports to be the list of members; and ask you if that refreshes your memory. Will you look at it, please?

A. I am looking at it.

Q. Now, can you remember any of the members?

A. I don't recall definitely any of these members belonging to any association.

Q. Not a single one?

A. Not definitely belonging to any particular association.

Q. I said the Southern California Garment Manufacturers [769] Association, Inc. I thought you were chairman or president or something like that.

A. That was about five or six years ago, and

(Testimony of Sam Bothman.)

those things are very vague in my mind, and I don't recall hardly anything about that at all.

Q. You just don't remember a thing?

A. That is right.

Q. Let's try to help you further, to jog your memory I show you pages 23346, 23347 of Senate Civil Liberties Report, Vol. 64, relating to the actual minutes of the Southern California Garment Manufacturers, Inc., and which you allegedly were present, according to the minutes. Now, will that help you? Will you read those?

A. No, this entire thing is very vague in my mind.

Q. It is just absolutely a vacuum, isn't it? You can't remember a thing about it?

A. It has been five or six years ago and I don't recall any of the——

Trial Examiner Erickson: Mr. Sokol, to shorten this——

Mr. Sokol: I will.

Trial Examiner Erickson: ——is there anybody that you know of who can testify in the absence of the memory of this witness, as to the facts or the assertions that you make with regard to this \$5,000 forfeiture agreement?

Mr. Sokol: Yes. I told Board's attorney some time [770] ago concerning Mr. Wolfe.

Trial Examiner Erickson: Well, now, if you have anybody who can supply the memory of this particular witness——

Mr. Sokol: Well, after all——

(Testimony of Sam Bothman.)

Trial Examiner Erickson: —I will be very glad to keep the hearing open and issue any papers that are required to get the facts before the Board.

Mr. Sokol: All right. I will consult with the Board's attorney on that, whether or not we want to subpoena Mr. Wolfe.

Trial Examiner Erickson: This witness has definitely disclaimed any knowledge of, or memory, I mean to say, of any of the transactions that you offer—

Mr. Sokol: I agree with you.

Trial Examiner Erickson: —to show have been done:

Mr. Sokol: One of the salient reasons for my going into this is to show his memory of other events too, his credibility.

Trial Examiner Erickson: That is all right, but don't you suppose that it might be better to produce a witness who could testify as to the facts, if they are facts?

Mr. Sokol: I can assure you, your Honor, that I have consulted with Board's counsel on that, and have given him the names of the parties some time ago. [771]

Mr. Shapiro: Why aren't they here, Mr. Sokol?

Mr. Sokol: I don't have the power of subpoena. That is the Board's power, prior to the hearing.

Trial Examiner Erickson: No, no, just remember that you have the same rights, that the Board has, as a party in this case, if you are timely and observe the rules of the Board. I don't want you

(Testimony of Sam Bothman.)

to give the impression to Mr. Shapiro, or anybody else, that you don't have the same rights that Mr. Nicoson or Mr. Ryan has in the prosecution of this case.

Q. (By Mr. Sokol) Now, may I go into this?

Mr. Bothman, you testified that you did discuss Paragraph I, shown on page 19353 of Senate Civil Liberties Report, Vol. 52; is that right?

Mr. Shapiro: If your Honor please, might it be understood that I have the same running objection to this line of questioning at this time that the court allowed me two or three days ago?

Trial Examiner Erickson: Yes.

Mr. Shapiro: And may I make the further objection to this questioning at this time on the ground that it is not cross examination. None of this was developed on my examination. It is repetitious.

Trial Examiner Erickson: I will overrule your objection for the time being, to see what Mr. Sokol is [772] going after.

Q. (By Mr. Sokol) If I am incorrect, you correct me. Did you discuss Paragraph 3 of the agreement?

A. As I stated the day before, those things are very vague in my mind.

Q. But at that time, the day before, you read this agreement and said you did discuss it. Are you changing your testimony?

A. I said that the entire operations are very

(Testimony of Sam Bothman.)

vague in my mind and I don't recall the things, as they happened, as you say they did.

Q. Now, if that is so vague, do you remember testifying the other day that you did discuss Paragraph I. Do you remember that?

A. I remember saying that I might have discussed that, or that I did discuss it, but I also qualified it by saying that it is very vague and I can't tell you any of the exact things that happened at that particular period.

Q. You didn't discuss the question of recognition of the unions? A. I don't recall that.

Q. You said that the association was formed as an employment agency?

A. That part is also very vague in my mind.

Q. That also is vague? [773]

A. Yes, that is right.

Q. Everything is vague?

A. The association, as you put it, was very vague.

Q. I will show you here—maybe this will jog your memory—page 19347 of the Senate Civil Liberties Report, Vol. 52, as follows, referring to the purpose of the organization: "Absorbing help to avoid union contact." Do you remember that?

A. I know nothing about the Senate Civil Liberties Report. The first I heard of it was when you put this before me.

Q. These are notes of your organization. Will you read those notes?

(Testimony of Sam Bothman.)

A. However, I know nothing about this report, as I have never seen this.

Q. You refuse to even look at it?

A. No, I will look.

Q. You don't want your memory jogged. Do you want to assist the Court at this time?

A. These things are all so vague in my mind that I would not say I remember anything about it.

Q. You stated on cross examination, by myself, that you talked to your employees throughout the year 1941 about unions. Did you discuss it with them in 1940?

A. I can't recall definitely that I did or that I didn't.

Q. Can you remember this: when did you first learn of [774] Mr. Sardo's felony conviction?

A. Mr. Sardo's felony conviction?

Q. Yes.

A. I think it was about a week or so after the strike was called in 1941.

Q. Was it two weeks, three weeks, four weeks?

A. No; I think it was about a week.

Q. Now, how did you learn that?

A. One of the officers, who was in charge of the officers in our division, told me that one morning.

Q. What was his name?

A. I don't recall his name. One of the officers downstairs.

Q. He came up to you and told you?

A. No, downstairs he told me in the lobby.

(Testimony of Sam Bothman.)

Q. You don't remember his name or his rank?

A. No; I can't recall his name.

Q. Or his rank? A. No.

Q. Was he plain clothes or uniformed?

A. Uniform, I think. Tucker, I think his name was. I am almost sure his name was Tucker.

Q. Are you positive of that?

A. No. I think his name was Tucker, but I am not sure of that. [775]

Q. Then you don't know whether he would back you up or not?

A. I haven't the least idea.

Mr. Shapiro: Now, counsel, I am going to ask—

Mr. Sokol: I want to get the name of the party and I will produce him.

Mr. Shapiro: He gave you the name. Subpoena Tucker and we will find out if he backs him up.

Mr. Sokol: That is another fishing expedition, according to his memory.

Q. (By Mr. Sokol) Well, now, you met in June of 1941 with your men cutters, did you or didn't you? Maybe I am mistaken about that, since you have resumed the stand.

A. I met with my men cutters one evening, whether it was in June or July, I am not so sure, but I met with them one evening previous to the strike. In fact, I met with them two evenings previous to the strike.

Q. Are you sure it was before the strike?

(Testimony of Sam Bothman.)

A. That is right.

Q. Have you ever negotiated with any of your other departments? A. In what manner?

Q. Have you ever——

A. In what manner have I negotiated?

Q. By giving a group of employees a blanket increase.

A. Oh, I can't say that I ever have at one time. [776]

Q. Well, you have negotiated with cutters before? You have given them blanket increases, haven't you?

A. No, I can't say that I ever negotiated with them as a group before.

Q. But you are positive you negotiated with them, as a group, on this occasion?

A. This particular time. They called me back and I went back and talked to them, yes.

Q. Why didn't you call in the girls? Let me ask your this, before going into that: Did you give the girls the same raise you gave the men cutters?

Mr. Shapiro: I remember distinctly that all this was gone into yesterday. We are going over the same ground.

Mr. Sokol: Not this question, or I wouldn't be bringing it up again.

Mr. Shapiro: This identical question was asked.

Trial Examiner Erickson: Overruled.

The Witness: Repeat the question, please.

Mr. Sokol: Read the question.

(The question was read.)

(Testimony of Sam Bothman.)

The Witness: I didn't talk to the girls at that particular time. At that particular time the girls never got a raise.

Q. (By Mr. Sokol) How about Mr. Swartz, did you ever discuss, or did you ever talk to him about unions? [777]

A. Before the strike or after the strike?

Q. Oh, let's make it in general, any time at all.

A. Oh, I might have in just an off-hand way, not really to sit down and discuss it.

Q. You do remember that?

A. Not definitely, no. I can't recall other than the last meeting I had with the boys, I said it to all of them in general, I said it to Mr. Swartz; I said it to the six boys that are here, and also to Mr. Litwin who was at that meeting. I asked them all the questions.

Q. Did you ever talk to Swartz personally concerning the membership of the boys in any union? Do you deny that or do you say you did?

A. I might have spoke to him in a general way in reference to the union.

Q. When was that?

A. I don't recall exactly when.

Q. Was that before or after the strike?

A. It might have been before and afterwards. I did discuss it.

Q. The Trial Examiner wants the facts. Did you, or didn't you?

A. I discussed it quite a lot after the strike but

(Testimony of Sam Bothman.)

before the strike I did not go into it on the ground that——

Q. But after the strike you did? [778]

A. Yes.

Q. When was the first time you discussed the Cutters Local with Mr. Swartz? Did you discuss the Cutters Local with him?

A. So far as the Local is concerned?

Q. The Union, I will say, the I. L. G. W. U.

A. No, I never discussed the Cutters Local with Mr. Swartz at any time.

Q. What union did you discuss with him?

A. The union as a whole. I said, for instance, on the morning of the strike, for example——

Q. Yes.

A. ——I said to him, “Gee, I am surprised the boys went out.”

And he said, “Well, they did.”

And I said, “Well, I am surely surprised, but we are going to try to get along the best we can.” And that is all.

Q. What about the union. I want the conversations about the union.

A. I can't remember those conversations.

Q. Do you deny that you had any with Swartz?

A. After the strike?

Q. Yes. A. No.

Q. How many did you have with him? [779]

A. I can't recall.

Q. Quite frequently.

(Testimony of Sam Bothman.)

A. During those two or three days we discussed it, yes.

Q. All right. Can you tell us the substance of any particular conversation about the union?

A. Not necessarily, no. I don't recall the exact dates.

Q. Didn't you insure your workers before the strike? A. We did, all of the workers.

Q. How much insurance did you put on them?

A. It was a blanket policy.

Q. A blanket policy?

A. Yes; Health & Accident Policy.

Q. Did you pay for that?

A. The firm paid for it.

Q. When you had this meeting in June, 1941, you say you gave them the alternative of one or two things; isn't that right? A. That is right.

Q. You said, "take it or leave it," is that right?

A. No; have your choice, take whichever you like.

Q. They could have a raise but they couldn't have anything else; is that right?

A. I never mentioned anything else.

Q. You did say that that would be the alternative.

A. No, I said—in fact, it was in a very friendly manner, [780] and I know received in a very friendly manner.

Q. What did you say?

A. I said "You fellows want a raise. Well, I will give you a raise or you can select whether or not if in the event business gets good, and we have

(Testimony of Sam Bothman.)

to put on other men, and instead of giving you time and a half to work extra time, I will have to put on other men. Therefore, you will only have your regular 40 hours a week work."

Q. What raise did you say you would give them?

A. At that particular time?

Q. Yes.

A. I don't recall exactly what raise I said I would give them. I know what raise I did give them, but I don't recall the exact amount that I said I would give them, but I did say that I would give them a raise.

And when we had the second meeting, they asked what the raise would be and I told them. I said that the raise would be 15 cents an hour.

Trial Examiner Erickson: Is there any dispute about that?

Mr. Shapiro: Not that I know of.

Mr. Sokol: That is all. Nothing further.

Q. (By Mr. Nicoson) Just one question: You said that you had a conversation with Mr. Swartz on the day of the strike in which you said to him this, or this in substance: [781] "Gee, I am surprised that the boys went out." Do you remember just testifying to that? A. Yes.

Q. When did you have that conversation with him?

A. Well, it was, I think, early in the morning when I first got there.

Mr. Nicoson: That is all.

The Witness: That is as much as I remember.

(Testimony of Sam Bothman.)

Q. (By Trial Examiner Erickson) I have a confusion in my thought as to what you meant when you said you were surprised. Will you tell me what you meant by that? A. Sir?

Q. Why were you surprised that the boys went out on strike?

A. We seemed to have a very congenial factory. Everyone seemed to be very happy at our place. We never had any squabbles in our factory, and as far as I knew, everybody in our entire organization was very happy with their work, and they were very happy with their positions.

Q. What part of this 15-cent an hour raise did you have in your mind when you said you were surprised; or did you have any part of it in your mind at that time?

A. Pardon me? I didn't get that question.

Trial Examiner Erickson: Read the question.

(The question was read.) [782]

The Witness: You mean at the time of the strike?

Q. (By Trial Examiner Erickson) No; at the time that you said you were surprised that the boys went out on strike.

A. Well, it was six weeks after they had their raise.

Q. That is all right. You were talking with Swartz and you said you were surprised that the boys went out; and I asked you a question now. Are you in position to answer it, or aren't you?

(Testimony of Sam Bothman.)

A. Why was I surprised when the boys went out? Evidently, I am not understanding your question exactly. I am rather confused.

Q. I will ask it again, then.

A. All right.

Q. Did the 15-cent raise that you gave a few days after June 11th have any part in the makeup of the statement that you made to Swartz when he told you the boys went out on strike, and as a reply you said, "I am surprised they went out."

A. No, the raise had nothing to do with the fact that I was surprised that the boys went out, because I was under the impression that everybody in our factory was very happy with their work, and I did not take that particular raise in consideration at all in my surprise, because—pardon me, I will go a little further—because I was under [783] the impression, and I still am under the impression, that hadn't I given the boys the raise at that particular time, that if the business looked like we couldn't afford that kind of a raise, and I would have talked to them in that manner, those same six boys would have stayed there and worked without the raise.

Q. Well, I have in my mind this thought: that one of the things that makes employees happy is the opportunity that the employer gives to make more money, if they deserve it; is that right?

A. That is right; and also a congenial condition in the place. That is taken into consideration somewhat.

Q. Yes.

(Testimony of Sam Bothman.)

A. We didn't have slave driving in our organization. Everyone seemed to be very well satisfied. I mean I didn't get daily complaints. I didn't have people coming to me, that somebody was doing this, and this; everybody seemed to be very happy in our organization.

Q. Do you think these six men, or the seven men that you called together on June 11th, would have been happier on June 14th if you hadn't given them the opportunity of a raise that you promised them on June 11th; that is, either a raise or working overtime?

A. Oh, no. I never promise anyone anything and go back on my promise; and I think the boys knew me well enough. [784]

Q. That isn't the question. Do you suppose these boys would have been less happy on, we will say, June 14th, or July 14th, than they were on June 11th, if they had not been given the alternative or a raise, or overtime pay, by the promise that you gave on July 11th?

A. Certainly, if I hadn't come through there and given them the raise, I think they would have been unhappy. They would have had the right to, if I would offer them something.

Q. That isn't what I am getting at. You say you told Swartz you couldn't understand why these boys went out on strike, because everything was congenial in the plant.

A. That is right.

Q. I am asking you now: do you think that the raise that you gave on July 11th, the raise you promised on July 11th and gave a few days later, had

(Testimony of Sam Bothman.)

any part in making up your mind as to why you told Swartz that things were congenial in the plant?

A. No, I don't think that that entered into it at all.

Q. It had no part in it?

A. I don't feel like it had because I was under the impression, and even the day that the boys walked out, I still thought that those six boys, in fact they told me that themselves more than once, that they were very happy working for me. That they at times—in fact, after the [785] strike, I remember very distinctly one or two of the boys making vague remarks that it was more or less Lou Swartz's fault than it was Mr. Bothman's.

Q. Which two boys were they?

A. Well, I say it is very vague in my mind, but I do remember. It seems to me like one of them was Vito.

Mr. Sokol: Let's get that conversation.

Q. (By Trial Examiner Erickson) When was that? You say it was after the strike?

A. Yes, after the strike, on the picket line, because there were conversations going back and forth. I talked to the boys on the picket line and they talked to me. Besides, I don't think there was any enmity between myself and those boys. In fact, I don't think there is a great deal now.

Q. I don't think there is either. I have seen very friendly relations between you and all the boys.

A. I don't think there has been.

(Testimony of Sam Bothman.)

Q. I am asking you now to tell me what that conversation was.

A. I recall one conversation saying that Lou didn't treat somebody right, or something. I mean it is a little vague, your Honor, and I can't tell you exactly. It seems to me like it was Vito that told me. We were talking about it one day just in a rather general conversation. [786]

Q. All right. Now, we have had a lot of testimony here about the unit, and each witness has testified regarding the unit. I mean, Mr. Litwin and Mr. Swartz, and the rest of the boys; do you recall that testimony? A. Yes.

Mr. Shapiro: I don't understand what your Honor refers to.

Q. (By Trial Examiner Erickson) Well, I will particularly speak of the witnesses Litwin and Swartz. They spoke of cutters in certain combinations and meanings; and in my memory, at no time in any of the testimony did either Litwin or Swartz speak of anybody except the men cutters. Do you remember that?

A. I know that they referred to the men cutters, the biggest part of the time, but I don't recall all of the testimony.

Q. I mean, any operation that concerned individuals, except for the description of jobs of certain peoples. For instance, now, they met in the Exchange Cafe, and they were told that preparations were made to come into a certain garage for protection and when the question of wages was dis-

(Testimony of Sam Bothman.)

ussed, there were a certain group who were named; do you remember that testimony?

A. That is right; I do.

Q. I have in mind that with the description of all the [787] job classifications in that enclosure there, you call the cutting room, I am wondering why wasn't Eunice and Miss Richard and the other people told of the protection that Swartz would give by going into a certain door in the garage or meeting in a certain Exchange restaurant, or meeting in a certain portion of the plant after 4:30 in the evening, if they weren't, what I call, maybe specialists, or a particular group of employees that should be treated in a way other than Richard and Eunice and the other girl? Can you give me an answer to that?

A. As far as him telling the boys where to come in, or to come to a garage, I knew nothing about that at all. So far as meeting with the boys in the factory, I met with them and no other girls in the factory did I meet with, just the boys are the only ones I took this matter up with. I never took it up with the girls.

Q. If these girls were cutters, why didn't you bring them in? A. Because I——

Q. I am really very serious. I think this is a very important question.

A. Well, because I handled each individual person according to their own merits, and, incidentally, this is the first time that I had ever been called by a group to talk to a group. [788]

(Testimony of Sam Bothman.)

Q. All right. Did you consider the group as you would an individual?

A. The men were the ones that asked for the conference with me. The girls, evidently, they didn't take the girls into consideration.

Q. That is right. I will agree with you there.

A. The men didn't take the girls in their consideration in the factory, because they didn't call in any of the rest of them.

Q. They don't. I think they testified they are a unit in themselves.

A. That is right.

Q. You say that you treat individuals.

A. Yes.

Q. Well, wasn't this group an individual?

A. No, not at this particular meeting. This is the first time that I ever talked to any of the employees in a group.

Q. But you did talk to them as an individual?

A. That is right.

Q. Although there were six there; is that right?

A. I talked how?

Q. You talked to them as an individual?

A. Within the group at that particular meeting, yes, surely. [789]

Q. All right.

A. I talked to everybody that was there at that meeting.

Trial Examiner Erickson: That is all. Anything further?

Mr. Nicoson: No questions.

(Testimony of Sam Bothman.)

Redirect Examination

Q. (By Mr. Shapiro) I have one or two questions.

You were asked to produce certain of your records. Did you produce the records?

A. That payroll record, yes.

Mr. Shapiro: I have it here, Mr. Nicoson, if you want it.

Mr. Nicoson: Yes.

Q. (By Mr. Shapiro) On your cross examination this morning, in response to a question by Mr. Nicoson, which question was as follows—and for the record the reporter has furnished me with this transcript of the two or three questions and answers:

“Q. (By Mr. Nicoson) Well, now, as a matter of fact, Mr. Bothman, it really wasn't a matter of unit at all, was it? It was a matter that you just wouldn't bargain with the union under any circumstances; isn't that correct?

“A. It is definitely a unit.

“Q. That is a plain fact; isn't it? [790]

“A. Certainly six people out of a factory of 110 certainly don't represent a unit. It is not a representative body.”

Now, will you state to me what you meant when you answered that question as to whether or not you wouldn't bargain with the union under any circumstances and that the question of unit wasn't involved at all?

(Testimony of Sam Bothman.)

Mr. Nicoson: I object to what he meant. The record speaks for itself.

Trial Examiner Erickson: Overruled. You may answer.

Q. (By Mr. Shapiro) I will read the question again, or, if you would like to look at it, you may.

A. I meant that six people did not constitute a majority of a unit of 110 people so, therefore, I did not feel that I should have to bargain with a representative out of such a small group. That is exactly what I meant.

Q. Did you mean by that answer to state that you conceded, or admitted that the cutters were a unit? A. I did not.

Mr. Shapiro: That is all.

Recross Examination

Q. (By Mr. Sokol) Let me take you on that, Mr. Bothman. So you wouldn't bargain with the cutters as a unit; is that right? Is that right, or is it wrong?

A. I said a cutters representative. [791]

Q. Answer my question, please. So you wouldn't bargain with the cutters, as a unit?

A. I didn't say that. I did not say that.

Q. Will you bargain with the cutters as a unit?

A. If the National Labor Relations Board deems it a unit, appropriate for bargaining, that is a different story.

Q. But you do say you would bargain with the representative of all your employees, don't you, without the Labor Board certifying it?

(Testimony of Sam Bothman.)

A. I said what?

Q. Suppose a representative came to you, representing all of the employees, would you bargain with that representative?

A. If they were the authorized agent.

Q. Must they be certified by the Labor Board before you would bargain with them?

A. They must be certified by my people.

Q. I see. Now, when the union wrote to you, long before the strike, and asked you to meet with them, why didn't you meet with the union to find out just who they represented?

A. Because out of 115 people in our employment, over 80 per cent were at work, coming through a picket line, and therefore I concluded that the union was not a lawful representative.

Q. Well, long before the strike the union sent you a letter asking you to meet with the union's representative. [792]

Trial Examiner Erickson: How long, now.

Q. (By Mr. Sokol) Several months, wasn't it?

A. I don't recall the letter at all.

Q. According to the testimony of Mr. Wishnak, a letter was sent requesting a meeting.

Mr. Shapiro: There is nothing in the record other than Mr. Wishnak's testimony. And the only letters in evidence are your letters, Mr. Sokol.

Q. (By Mr. Sokol) I will ask you: did you ever receive any letters from the union requesting you to meet with the union's representative?

A. I don't recall any letters other than those

(Testimony of Sam Bothman.)

that I have brought here and given to Mr. Shapiro.

Q. All right. When I put in my 'phone calls at the beginning, you didn't know how many people the union represented, did you, from my own conversation with your secretary, did you?

A. I don't know what kind of a conversation you had with my secretary.

Q. You have already stated that you received my calls and didn't answer them. Now, do you think that I telephoned—

A. I don't know what kind of conversations you had with my secretary. I am answering your question, Mr. Sokol.

Q. Your secretary, Miss Finkenstein, told me she was making notes of my conversation, I asked her to. Did she [793] give you the information?

A. Not that I remember.

Q. But she did tell you I called?

A. Yes.

Q. All right. Now, you knew I was the union's attorney, didn't you?

A. Frankly speaking, I didn't know who you were. I didn't know who you were at that time, no.

Mr. Sokol: That is enough.

The Witness: I never heard of you before.

Mr. Shapiro: Mr. Bothman, let me have your attention. If a majority of the production employees of Lettie Lee, Inc. indicate their willingness or their desire to affiliate with a union, and that fact is demonstrated to you, and the union,

(Testimony of Sam Bothman.)

or whatever representative it might be, represents 51 per cent, or more, of your payroll, would you be willing to bargain with that representative?

Mr. Nicoson: I object to that.

Trial Examiner Erickson: That is overruled.

The Witness: Certainly.

Mr. Shapiro: That is all.

Mr. Sokol: Do you include the office workers?

Mr. Shapiro: I said production workers.

Mr. Sokol: Along with the employees?

Mr. Shapiro: You can include the office workers if [794] you want to.

Mr. Sokol: All right. I just wanted to have in the record what unit you really claimed was appropriate.

Q. (By Mr. Sokol) Do you claim the office workers should be in the unit too, Mr. Bothman?

A. Production workers.

Q. Should the office workers be in there? Should they have a bargaining representative with the production workers?

A. I don't know what the custom is in our industry, but whatever the custom is in our industry, naturally, I will be more than happy to follow.

Trial Examiner Erickson: The custom seems to be, from the testimony, that cutters are a unit that has been deemed appropriate in your particular line of business. Haven't you heard that from this testimony here?

The Witness: No, I never deemed the cutters as an individual unit.

(Testimony of Sam Bothman.)

Q. (By Trial Examiner Erickson) You mean that you haven't?

A. That is right. Or it isn't the custom in the industry, as a whole, because practically every contract that is signed with the dress people, they have signed it as an entire factory, not any individual unit alone.

Q. I haven't seen this contract that you introduced here a little while ago, but it seems to me the testimony is [795] when cutters are a part of that agreement, they are more or less autonomous in the agreement; is that right, or is it wrong?

Mr. Sokol: Absolutely. He knows that.

Mr. Shapiro: Who testified to that, your Honor?

Trial Examiner Erickson: I am asking the witness.

Mr. Shapiro: I see.

The Witness: No, the cutters are just a part of the factory, like any other part of the factory, just like the operators.

Q. (By Trial Examiner Erickson) Now, I am getting at the question I want to ask you. Where do you get this information?

A. That has been the general practice so far as I know in this locality.

Q. Now, will you tell me one person or one employer who has practiced, what you call, the custom in this locality?

A. Well, I would say—if you will read the contract of the Dress Association——

Q. All right. Let me see it.

(Testimony of Sam Bothman.)

A. —you will find they have a joint bargaining committee.

Q. Have you read this contract?

A. No, I haven't, not completely, but I have heard it discussed at various times, but I haven't read that contract thoroughly. [796]

Trial Examiner Erickson: Well, Mr. Sokol, you are familiar with this contract.

Mr. Sokol: Yes.

Trial Examiner Erickson: Where in this contract are cutters mentioned?

Mr. Shapiro: I know of no place in that contract where it states, expressly, or impliedly, that the cutters are an autonomous unit.

Mr. Sokol: It only provides for the wage for the cutters.

Mr. Shapiro: It provides for the wages of the members of the other crafts. There are four crafts parties to that agreement.

Mr. Sokol: These are the minimum wages, and it provides for a special increase for cutters only. That is on page four, special increase for the cutters only, apart from all the other workers. They got a special increase because their conditions were different and that was especially provided for. I happened to be present when that was negotiated.

Q. (By Trial Examiner Erickson) Is that what you did on July 11th? Isn't that exactly what you did on July 11th? A. On July 11th?

Q. Well——

Mr. Nicoson: June 11th. [797]

(Testimony of Sam Bothman.)

Trial Examiner Erickson: No; July 11th.

Mr. Nicoson: June 13th.

The Witness: Yes, I gave the cutters an increase, if that is what you mean, some of the cutters, not all of them; some of them I gave an increase to.

Q. (By Trial Examiner Erickson) Which cutters didn't you give an increase to?

A. At that particular time I didn't give the girls—the girls didn't get an increase at that particular time.

Mr. Sokol: All the rest of the workers in that agreement got a blanket wage increase in proportion to the cost of living.

Mr. Shapiro: I am going to object to counsel testifying.

Mr. Sokol: You wanted a little explanation of the contract.

Mr. Shapiro: If it is to be considered as evidence, let's take it in the customary way.

Mr. Sokol: That is all.

Mr. Shapiro: May I point out, your Honor, that in line with your query, that there is nothing in this agreement, expressed or implied, which indicates that the cutters are in any sense autonomous, that they are different from any other production employee, except that they receive a different rate of pay.

Now, if you will look through this agreement, and I [798] know your Honor will——

Mr. Sokol: I can explain that. I can be called

to the stand. I was present at the negotiations which the mayor called for that purpose.

Mr. Shapiro: Just a minute. May I finish. If you will look through the agreement, you will find that wage scales are provided.

Mr. Sokol: Now, I object to your testifying. You objected to my characterizing. Now, let's get off the record if we are going to do that. In other words, you can characterize, but when it comes my turn, I can't.

Trial Examiner Erickson: Go ahead. I haven't stopped you.

Mr. Shapiro: The agreement provides for the working hours of all workers in Paragraph 4. There is no special provision made for the working hours of cutters or anything else.

Mr. Sokol: We are not arguing.

Mr. Shapiro: I am going to show that this agreement applies alike to every member of the——

Mr. Sokol: Put on some testimony. Put me on.

Mr. Shapiro: You can't put on any testimony to vary or explain this contract.

Trial Examiner Erickson: Go ahead. Mr. Sokol, let Mr. Shapiro go ahead with his argument. [799]

If you have any refutation, I will give you an opportunity.

Mr. Sokol: I don't think it is the proper time for argument.

Trial Examiner Erickson: Go ahead, Mr. Shapiro.

Mr. Shapiro: The provisions of this agreement

apply alike to every member of each of the four crafts represented by Locals 96, 97, 84 and 65. Those are four production units.

Wage scales are provided in Paragraph 7 (b). And in Paragraph 7 for operators, finishers, and pressers. The operators get 75 cents an hour; the finishers get 55; and the pressers get \$1.00.

In 7 (b), under the higher-priced dresses, the cutters get \$40 a week, sample makers \$25 a week; the special machine operators get \$20 a week; drapers get \$22 a week, examiners \$18 a week; cleaners and pinkers \$17 a week; assorters and floor girls \$17 a week.

Then in the next paragraph, as pointed out by Mr. Sokol, it provides for a flat increase of \$3 a week to cutters. There is nothing in this agreement that singles out the cutters in any respect. It provides for hours, conditions of employment, and compensation of members of each of these particular crafts.

And it expressly states that the agreement is made by [800] the joint Board of the International on behalf of the members of Local 96, 97, 84 and 65. Now, I deem this, your Honor, to be the most important piece of evidence in this case.

Trial Examiner Erickson: It is in the record.

Mr. Shapiro: Yes, I know. This is the most important evidence as to whether or not, regardless of what the industry thinks, or the union thinks, as to what the unit thinks, as to whether or not negotiations should be carried on by the Cutters Local

alone, or by the Cutters Local and the other production locals in the industry as a whole in this community. And this definitely establishes that—

Trial Examiner Erickson: It is in evidence.

Mr. Shapiro: On August 8, 1941, the agreement provides that all of these crafts bargain as one unit, under a joint board, with the manufacturers. It is capable of no other construction.

Mr. Nicoson: I submit that the record shows that is merely Mr. Shapiro's construction of what the contract says. The contract is in evidence and the Board has a right, and so has the Examiner, to make his own construction of the contract.

Trial Examiner Erickson: That is understood. Is there anything further from this witness? [801]

Mr. Shapiro: Nothing further.

Mr. Nicoson: I have nothing further.

Trial Examiner Erickson: At this time I am going to inform the parties that they may, within 30 days after the date—

Mr. Nicoson: Wait a minute. I just said nothing further with this witness.

Trial Examiner Erickson: That is all right. I am making the statement at this time.

Mr. Nicoson: You are not closing the record.

Trial Examiner Erickson: No, no.

(Continuing) —that any party may, within 30 days after the date of the order transferring the case to the Board, pursuant to Section 32 of Article II, file exceptions, and briefs in support thereof, with the Board; and that should any party de-

sire permission to argue orally before the Board, request therefor should be made in writing to the Board within 20 days after the date of the order transferring the case to the Board.

Go ahead, Mr. Nicoson.

Mr. Nicoson: Do I understand that Respondent has rested?

Trial Examiner Erickson: I don't know. I just made that statement.

Mr. Nicoson: I thought you were closing the case. [802] Excuse me.

Trial Examiner Erickson: Oh, no.

Mr. Shapiro: The respondent rests.

Trial Examiner Erickson: We will recess for five minutes.

(A short recess was had.)

Trial Examiner Erickson: The proceedings will come to order.

Mr. Nicoson: At this time, the Board moves to conform the pleadings to the proof, and rests.

Mr. Shapiro: May I make one or two motions?

Trial Examiner Erickson: Is there any objection to that?

Mr. Shapiro: I think not. This is off the record. Is that customary, frankly?

Trial Examiner Erickson: Well, it means that the Board, in case of a mistake in dates or names or spelling—

Mr. Shapiro: There is no objection, your Honor.

Trial Examiner Erickson: It will be granted.

Mr. Shapiro: At this time, if your Honor please, I will move to dismiss the complaint in so far as it proceeds upon the theory that the cutters are the appropriate bargaining unit on the ground that it affirmatively appears, from the evidence, that the cutters are not the appropriate bargaining unit.

[803]

Trial Examiner Erickson: I am going to tell you, Mr. Shapiro, it is going to take a lot of studying; and I am going to defer a ruling on that motion.

Mr. Shapiro: Very well. And I will make the same motion to dismiss upon the ground that it affirmatively appears, from the record, that the union, the alleged representative of the employees, does not represent a majority of the cutters, nor of the employees in the cutting department, or of the production employees of Lettie Lee, the respondent in this case.

Trial Examiner Erickson: I wish I could answer you, but I can't.

Mr. Shapiro: And the ruling is likewise deferred?

Trial Examiner Erickson: Yes.

Mr. Shapiro: At this time I will move the Court to dismiss the complaint in so far as it relates to alleged unfair practices upon the ground that it affirmatively appears, from the evidence in the case, that the respondent has not been guilty of unfair labor practices, as alleged in the complaint, or otherwise.

Trial Examiner Erickson: I can't definitely deny that.

Mr. Shapiro: I have no further motions.

Mr. Nicoson: Just one thing further for the record: there are a couple of pages in this bound volume of the [804] payroll that I would like to make arrangements with the reporter to take out and have photostated and then returned, return the originals, together with the book, to Mr. Bothman.

Trial Examiner Erickson: I think that was granted to you.

Mr. Nicoson: Well, I just wanted it in the record. This reporter wasn't here at the time that permission was granted and I wanted to restate it on the record. It was granted to me at that time.

Trial Examiner Erickson: Yes.

Mr. Shapiro: I have one further motion, if I may make it.

Trial Examiner Erickson: Yes.

Mr. Shapiro: At this time I move to strike from the record all evidence of conversations between any of the witnesses and Louis Swartz, upon the ground that they are hearsay, not binding upon the respondent, upon the ground that no proper foundation has been laid for the admission of such conversations, and no showing has been made that Louis Swartz was in any way authorized or directed or empowered to make any statements, or to do any acts for or on behalf of the respondent.

Trial Examiner Erickson: Mr. Shapiro, to save you time in your brief, I will state definitely, in my

opinion [805] Mr. Swartz has as much right and had the same respect from the employees as Mr. Bothman, or Miss Lee, or anybody else in the concern would have. That is my definite conclusion. So I am going to deny your motion to strike the testimony with regard to Mr. Swartz.

Mr. Shapiro: Very well.

Trial Examiner Erickson: So far as I am concerned, I am going to try and save you as much time as I can, or as much effort as you might wish to make with regard to Swartz in your brief. And I think that during recesses I have said to both you, and Mr. Sokol, that you have presented me with a case that presents a problem of unit that is going to be, as we say, hard to crack. And I can't command, but I will ask that each of you file a brief.

Mr. Sokol: Now, Mr. Examiner, I am willing to file a brief, but I wasn't present at all these sessions, and I don't like to do this, but I think that the Board's counsel should be instructed to file a brief on that also, because I wasn't present at all the sessions and didn't hear all the testimony of some of these witnesses. I will give you a brief on the evidence that I heard.

Mr. Shapiro: Well, I take it, that your Honor is principally concerned with the law, rather than our interpretation of the facts. [806]

Trial Examiner Erickson: No.

Mr. Shapiro: Or rather the law as applied to the facts.

Trial Examiner Erickson: Yes. Let's make it a brief on the law, as applied to the facts, with the facts as applied to the law, whichever you want to call it.

Mr. Shapiro: But I take it that you wish the brief limited to the question of the appropriate unit?

Trial Examiner Erickson: Well, as far as I am concerned, I will be frank to say that that is in my mind the only question there is concerning this case.

Mr. Shapiro: Yes. I stated earlier today that I had respectable authority from various Circuit Courts of the United States, decided very recently, as to the materiality of the fact that an employee, or former employee, has been convicted of a felony. I take it your Honor would want those cases too?

Trial Examiner Erickson: No, I don't care for those.

Mr. Shapiro: Does your Honor feel that in the event a reinstatement order and back pay order should be made——

Trial Examiner Erickson: If it was an issue in the case, I would say it was important, but it is not, in my opinion, an issue in this case. I don't think that Mr. Bothman singled out this particular man, as not being employable, because of a crime he committed in Wisconsin [807] some years ago. I will be frank to say that. In this time of war we might as well be open and above-board in everything that we

think and feel. I will personally say that if I find that Lettie Lee, Inc., has committed unfair labor practices, and that the facts would show that this particular man was an employee, who went out on strike on July 24th because of an unfair labor practice, I wouldn't hesitate one minute to recommend to the Board that he be reinstated with full back pay. Now, I can't be any plainer than that.

Mr. Shapiro: No, your Honor couldn't be any plainer than that. However, with all due regard to your views, I think that under the well settled decisions, many of them recent, that as a matter of law, regardless of our personal feelings or sentiments, and regardless what the employer might have had in mind, that does not enter into it. In one of the latest cases it was found, after the matter had been decided by the Board, that one of the employees had been convicted of a felony, it has been held by the Circuit Court of Appeals that it is error to reorder that man reinstated, and to order him to receive back pay.

Trial Examiner Erickson: You forget, Mr. Shapiro, that it was only a few days after the strike commenced that there were certain people asked to come back, and this particular man was not asked to come back. And if you will [808] examine the record, if you have the record, you will find that it wasn't until January 26th that you had any evidence of the fact.

Mr. Shapiro: Your Honor is mistaken on that.

Trial Examiner Erickson: No; I am not mis-

taken. I mean, anything concrete, except what you were told.

Mr. Shapiro: Yes, that is correct.

Trial Examiner Erickson: I mean any official evidence.

Mr. Shapiro: That is right.

Trial Examiner Erickson: Yes.

Mr. Shapiro: But we had information, according to Mr. Bothman's testimony, he was told by a police officer.

Trial Examiner Erickson: Now, this record isn't closed yet, and I have yet to hear one word, either in your answer or in testimony, that this particular man was not offered reinstatement because he was convicted of a felony. And if you want to put on testimony, I am still here. I am still anxious to hear it. I want all of the facts.

Mr. Shapiro: All right. I will call Mr. Bothman to the stand. My recollection is that he was examined on that point. I will question him again so there will be no mistake about it.

Trial Examiner Erickson: He may be examined.

Mr. Sokol: Before we get to that, will you instruct [809] Board's counsel to prepare a brief also?

Mr. Nicoson: I object to that.

Trial Examiner Erickson: No, it is not required. I think the question is more important to you than it is to anyone else in this proceeding, because you are maintaining a craft that is, I would say, just as distinct as is the Bar Association or a

Medical Association, or any other specialized work that people perform. And I think you are right now—I will say this on the record, and I hope the reporter is taking it—in the position of maintaining something that was quite holy in the industry some years ago, and it may be today, and you put me on a damn hard spot.

SAM BOTHMAN

recalled as a witness by and on behalf of the Respondent, having previously been duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Shapiro:

Q. Mr. Bothman, why did you not ask Mr. Sardo to come back to work?

Mr. Nicoson: What was that question?

(The question was read.)

The Witness: Because I had heard that he was convicted of a crime of stealing clothes. One of the policemen who had charge of the squad out in front of our building [810] told me one morning, down in the hall, and I think it was a Mr. Tucker. However, I am not sure who this man was.

Trial Examiner Erickson: All right. We have heard that. I am sorry.

Mr. Shapiro: Yes, you have heard that.

Q. (By Mr. Shapiro) If you had not learned, or been advised that Mr. Sardo had been convicted

(Testimony of Sam Bothman.)

of the crime of grand larceny involving the theft of some 20 suits of clothes from his employer, would you have offered him reinstatement and asked him to come back to work?

Mr. Nicoson: I object to that. There is nothing in the evidence that he stole 20 suits of clothes. There is nothing to show that he knew about that at all.

Trial Examiner Erickson: Overruled.

The Witness: I would have asked him to come back like I did the other two boys—other three boys. I had no other reason because his work was good.

Q. (By Mr. Shapiro) Was there any other reason that you did not ask Mr. Sardo to return to work other than the fact that you had learned that he had been convicted of a felony?

A. None that I know of, no.

Q. Since you were advised by a police officer, who you believe was Mr. Tucker, that Mr. Sardo was convicted of a felony, to-wit, grand larceny, has that been confirmed to [811] you by receipt of certified copies of the record?

Mr. Nicoson: I object to that.

Mr. Shapiro: Is it admitted, or isn't it admitted?

Trial Examiner Erickson: I think it was admitted yesterday.

Mr. Nicoson: We admit his conviction, yes.

Mr. Shapiro: That is all.

Mr. Nicoson: No questions.

(Testimony of Sam Bothman.)

Q. (By Trial Examiner Erickson) I have a question as to the other two boys. There were three of them that went off, I think you testified?

A. That is right.

Trial Examiner Erickson: That is all. Anything further?

Mr. Shapiro: The respondent rests.

Trial Examiner Erickson: Anything further for the Board?

Mr. Nicoson: No.

Trial Examiner Erickson: Anything by the Union?

Mr. Sokol: No.

Trial Examiner Erickson: By the Respondent?

Mr. Shapiro: Nothing further.

Mr. Sokol: Briefs are sent to you in care of the Trial Examiner, the Chief Trial Examiner?

Trial Examiner Erickson: Five copies of a brief will [812] be expected by me from the Union and the Respondent within 15 days after the close of the hearing, which is today, and I want you to particularly stress the question of the unit in this case.

Mr. Shapiro: Where is that to be sent or mailed?

Trial Examiner Erickson: Send it to me, in care of the Chief Trial Examiner at Washington, D. C.; that is the Chief Trial Examiner of the National Labor Relations Board, Washington, D. C., within 15 days of today.

Now, if you want to argue, I will be glad to hear it, but I will be frank to say that I paid close atten-

tion to the evidence and I think the briefs will be more helpful than argument. I am not foreclosing the right to argue, if you want to. Do you, Mr. Sokol?

Mr. Sokol: No.

Mr. Shapiro: The respondent waives argument.

Mr. Nicoson: We will waive argument.

Trial Examiner Erickson: Then the hearing is closed.

(Whereupon, at 5:00 o'clock p. m. the hearing in the above-entitled matter was closed.)

[813]

In the United States Circuit Court of Appeals
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

LETTIE LEE, INC.,

Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate tran-

script of a proceeding had before said Board entitled, "In the Matter of Lettie Lee, Inc., and International Ladies' Garment Workers' Union, Cutters Local No. 84, A.F.L.," the same being Case No. C-2142 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony before Gustaf B. Erickson, Trial Examiner for the National Labor Relations Board, on January 19, 20, 26, 27, 28, and 29, 1942, together with all exhibits introduced in evidence.

(2) Copy of the Intermediate Report of Trial Examiner Erickson, dated March 21, 1942.

(3) Copy of order transferring case to the Board, dated March 24, 1942.

(4) Copy of respondent's exceptions to the Intermediate Report.

(5) Copy of decision, findings of fact, conclusions of law, and order issued by the National Labor Relations Board November 9, 1942, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of

Washington, District of Columbia, this 1st day of
March 1943.

[Seal]

JOHN E. LAWYER

Chief, Order Section, National
Labor Relations Board.

[Endorsed]: No. 10382. United States Circuit
Court of Appeals for the Ninth Circuit. National
Labor Relations Board, Petitioner, vs. Lettie Lee,
Inc., a corporation, Respondent. Transcript of
Record. Upon Petition for Enforcement of an
Order of the National Labor Relations Board.

Filed March 10, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10382

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

LETTIE LEE, INC.,

Respondent.

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

Comes now the National Labor Relations Board, petitioner in the above proceeding, and, in conformity with the revised rules of this Court heretofore adopted, hereby states the following points as those on which it intends to rely in this proceeding:

1. The Board's findings of fact are fully supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1), (3) and (5) of the Act.

2. The Board's order is wholly valid and proper under the Act.

Dated at Washington, D. C., this 5th day of March 1943.

NATIONAL LABOR RELATIONS BOARD

By /s/ ERNEST A. GROSS

Associate General Counsel

[Endorsed]: Filed Mar. 10, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
RESPONDENT INTENDS TO RELY

Comes now Lettie Lee, Inc., respondent in the above proceeding, and in conformity with the revised rules of this Court, hereby states the following points as those on which it intends to rely:

1. That the Board's findings of fact are not supported by substantial evidence.
2. That the Board's conclusions of law are not supported by the findings of fact.
3. That the Board's conclusions of law are not supported by the evidence.
4. That the Board's conclusions of law are contrary to law.
5. That the Board's conclusions of law are contrary to law and the evidence.
6. That the Board's order is not supported by the findings of fact.
7. That the Board's order is not supported by the conclusions of law.
8. That the Board's order is not supported by the evidence.
9. That the Board's order is contrary to law and the evidence.
10. That the Board's finding that respondent has engaged and/or is engaging in unfair labor practices within the meaning of Section 8 (1), (3) and (5) of the Act is not supported by the evidence and is contrary to law.

11. That the Board's order is wholly void and improper and in excess of the jurisdiction of the Board.

Dated: Los Angeles, California, March 17, 1943.

SAM WOLF & LEO SHAPIRO

By LEO SHAPIRO

Attorneys for Respondent

Lettie Lee, Inc.

[Endorsed]: Filed March 18, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION RE EXHIBITS

It Is Hereby Stipulated and Agreed by and between the attorneys for the above named parties that in lieu of printing Board Exhibits Nos. 15-A, B, C, & D, in the record, the Board will submit 5 photostatic copies thereof, and

It Is Further Stipulated and Agreed that these exhibits although not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties with the same force and effect as though printed and that either party shall have the right to have the said exhibits printed and included in the printed record in the event that appeal is later taken.

Dated at Washington, D. C., this 5th day of March 1943.

ERNEST A. GROSS

Associate General Counsel National Labor Relations Board

Dated at Los Angeles, California, this 19 day of March 1943.

SAM WOLF & LEO SHAPIRO

By LEO SHAPIRO

Attorneys for the Respondent
Lettie Lee, Inc.

So Ordered:

CURTIS D. WILBUR

Senior United States Circuit Judge

[Endorsed]: Filed Mar. 30, 1943. Paul P. O'Brien, Clerk.

No. 10382

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LETTIE LEE, INC., RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ROBERT B. WATTS,
General Counsel,
ERNEST A. GROSS,
Associate General Counsel,
HOWARD LICHTENSTEIN,
Assistant General Counsel,
OWSLEY VOSE,
ELEANOR SCHWARTZBACH,
Attorneys,
National Labor Relations Board.

To be argued by:

MAURICE J. NICOSON,
Attorney.

FILED

JUN - 7 1943

PAUL P. O'BRIEN,
CLERK

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**In the United States Circuit Court of Appeals
for the Ninth Circuit**

No. 10382

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LETTIE LEE, INC., RESPONDENT

*ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD*

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon a petition filed by the National Labor Relations Board for enforcement of an order issued against Lettie Lee, Inc., pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*). Respondent is a California corporation engaged in business at Los Angeles, California, where the unfair labor practices occurred. This Court has jurisdiction of the proceedings under Section 10 (e) of the Act.

The pertinent provisions of the Act are set out in the appendix, *infra*, pp. 21-22.

STATEMENT OF THE CASE

Upon charges and amended charges filed by International Ladies' Garment Workers' Union, Cutters Local No. 84, A. F. L. (herein called the Union), and upon the usual proceedings had pursuant to Section 10 of the Act, fully set forth in the Board's decision (R. 55), the Board on November 9, 1942, issued its findings of fact, conclusions of law, and order (R. 55; 45 N. L. R. B. 448), which may be briefly summarized as follows:

1. *Nature of respondent's business* (R. 59-60).—Respondent, a California corporation having its office and place of business at Los Angeles, California, is engaged in the manufacture of dresses. Most of the raw materials used in the conduct of its business are obtained from sources outside the State of California and the major portion of its finished products are sold to extra-state purchasers.¹

2. *The unfair labor practices* (R. 86).—The Board found that on and after July 22, 1941, respondent refused to bargain collectively with the Union, thereby violating Section 8 (5) and (1) of the Act; discriminatorily refused to reinstate six employees who participated in a strike caused and prolonged by respondent's unfair labor practices, thereby violating Section 8 (3) and (1) of the Act; and in these and other respects interfered with, restrained, and coerced its employees in the exercise of their rights under Section 7 of the Act, thereby violating Section 8 (1) of the Act.

¹ Respondent concedes that it is engaged in interstate commerce within the meaning of the Act (R. 188).

3. *The Board's order* (R. 87-90).—The Board ordered respondent to cease and desist from its unfair labor practices; to bargain collectively with the Union; to offer reinstatement or placement upon a preferential list, with back pay, to three striking employees who were discriminatorily refused reinstatement; upon application, to offer reinstatement or placement upon a preferential list to three other striking employees who were discriminatorily refused reinstatement and who subsequently were offered and refused to accept reinstatement, with back pay from five days after the date of any refusal of their applications for reinstatement; and to post appropriate notices.

SUMMARY OF ARGUMENT

I. The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1), (3), and (5) of the Act.

II. The Board's order is valid and proper.

ARGUMENT

POINT I

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1), (3) and (5) of the Act

A. Sequence of events

1. The union organizing campaign; respondent's hostile reaction

In May 1941 the International Ladies Garment Workers Union (herein called the International) in-

augurated a campaign to organize the employees of unorganized dress manufacturing plants in Los Angeles and vicinity (R. 191-192). Particularly active in this campaign was Cutters Local No. 84, which attempted to interest respondent's cutters in the organization (R. 117, 191-197). The cutters did not at once join the Union, but they did, however, present Sam Bothman, respondent's secretary-treasurer and general manager (R. 351, 354), with a joint request for a wage increase about this time (R. 117, 267, 299-300, 633).

On June 11, 1941, Bothman called the cutters together in the cutting room after work, ostensibly to reply to their request for a wage increase. Although this request was discussed Bothman took advantage of the meeting to broadcast his opposition to the Union. Thus, he opened the meeting by inquiring how many of the cutters had joined or intended to join the Union (R. 114, 154-156, 265). Receiving no response, he declared that the union officials were "a bunch of shysters" interested not in the employees, but only in their dues (R. 114-115, 265-266). He warned that the employees would have much less work if they joined the Union, that the Union would "stuff this place full of cutters and keep you fellows from getting all the work you should, and you will have to split it up with the new fellows" (R. 115, 265-266). Emphasizing his determination not to have any dealings with the Union, Bothman related an experience that he formerly had had in dealing with a union when the cutters attempted "to run the place" as a result of which he had to cease operations and "clear out" (R. 115-116). He then explicitly warned the cutters that

he would have nothing to do with the Union and would never sign a union contract, but that he would "sooner close up this place than operate under a bunch of shysters" (R. 115-116, 266-267). Confident that he had impressed the cutters that they should "stick it out together," Bothman concluded his remarks with the assertion that "he felt safe in talking to" the cutters, that he did not think they would "[walk] out if the strike was called" (R. 117).

Two days later Bothman again met with the cutters and announced that he intended to grant their request for a wage increase. He made it plain at the same time, however, that he would not tolerate any "dealings" with the Union (R. 119-121, 159-160).²

2. Respondent's cutters join the Union; respondent's refusal to arrange a bargaining conference with the union representatives

Despite respondent's efforts to prevent its cutters from affiliating with the Union, on July 21 a majority of respondent's cutters went to the union office and joined the organization (R. 124-125, 270-271, 293-294, 303-304, 309-310, 315-316). Commencing on July 22,

² Respondent's stubborn opposition to the Union was not unexpected. For over a year, at least, respondent had adhered consistently to the policy of refusing to employ union members. Thus in January 1940, when Angelo Costella applied to respondent for a job as a cutter, Bothman asked him whether he was a union man. Costella replied that he was not, and was put to work immediately (R. 312). Other applicants for employment were likewise questioned concerning their union membership and after ascertaining that they were not union members, were given employment with respondent (R. 112, 279-280, 284). At the hearing, Bothman admitted having sometimes asked applicants for employment whether they were union members. He could not recall the names of any union members he had hired (R. 389-390).

the Union, through David Sokol, its attorney, repeatedly called General Manager Bothman on the telephone, and although Sokol left messages to the effect that the Union represented a majority of respondent's cutters and desired to have Bothman call him for the purpose of arranging a bargaining conference (R. 243-247),³ and although Bothman concededly was informed of these calls (R. 263, 809), he at no time made any effort to communicate with Sokol or any other representative of the Union and no bargaining conference was ever arranged (R. 248, 683-684, 687).⁴

3. The strike; respondent's efforts to induce the cutters to abandon the Union and return to work; respondent ignores the Union's written requests for a bargaining conference

As a result of respondent's refusal to answer Attorney Sokol's requests for a bargaining conference, the strike committee of the International, at a meeting held on the evening of July 23, decided to include respondent among the companies against which a strike was to be called on the morning of July 24 (R. 199-200, 224, 228). On that morning the six cutters employed by respondent went out on strike and a picket line was formed outside the plant (R. 128, 274, 296, 311, 317).

During the strike respondent continued to manifest intense opposition to the Union and sought to induce the strikers individually to abandon the strike and re-

³ Sokol emphasized that a failure to recognize the Union might result in a strike and that Bothman's failure to return his calls "aggravated the situation" (R. 244, 247).

⁴ Finally on July 25 the person answering respondent's telephone informed Attorney Sokol that Bothman "will not answer your calls" (R. 263).

turn to work. On several occasions General Manager Bothman told the strikers that they were "fools" and "chumps" for not going back to work and again characterized the Union representatives and officials as "shysters" and "chiselers" who were "just looking out for themselves" (R. 131, 141-143, 276; cf. 130). He also reiterated his earlier warning that respondent would close the plant rather than sign a contract with the Union (R. 142).

On September 8, 1941, Attorney Sokol wrote respondent that the Union represented a majority of its cutters and requested respondent to bargain with the Union (R. 250-252). Sokol again wrote respondent on September 9 and 13, 1941, making the same request, but respondent ignored both of these communications, as it did Sokol's letter of September 8 (R. 253, 255-258, 382-383, 384). Respondent at no time replied to or acknowledged the Union's many requests for bargaining conferences, either oral or written (R. 383).

4. Respondent's refusal to reinstate the strikers; its further attempts to undermine the Union

In Attorney Sokol's letters to respondent of September 9 and 13, 1941, he also requested the immediate reinstatement of all the striking cutters (R. 253, 255-258). Respondent, however, as shown above, ignored these union requests. Instead, during October it dealt directly with several of the strikers, offering them reinstatement, but making it plain at the same time that it was offering them reinstatement as "individuals" and that its position with respect to the Union remained unchanged. Thus, en-

countering Employees Cimarusti, Berteaux, and Quinn on the picket line in October, Bothman asked each of them to return to work and added that he did not “want to have anything to do with those chiselers up there.” When they asked if Bothman would reinstate the other three striking employees, he replied “No, I am talking to you as individuals. I am not going to talk to you in a group,” and declared that of the three other strikers, two were “trouble makers” and “stinkers,” that the third was an ex-convict, and that he did not “want anything to do with” them (R. 143-145, 275-277, 290-292, 294-295, 299). The three cutters refused to accept reinstatement because of respondent’s refusal to reinstate the strikers as a group and its steadfast refusal to recognize the Union (R. 145, 277).

Swartz, foreman of the cutting room (R. 478, 486), also sought to undermine the Union by soliciting two employees individually to return to work.⁵ As in the

⁵ Respondent’s attempt to avoid responsibility for the acts of Foreman Swartz is clearly unwarranted. Swartz supervises the employees in the cutting room and distributes the work among them according to their varying capabilities, interviews applicants for positions, and is paid \$10 a week more than the other cutters (R. 151-152, 183, 302, 308, 486, 524-526, 567). Swartz is referred to by the employees in the cutting room as their “foreman” (R. 113, 152, 279, 478). Thus Swartz plainly occupied a position of sufficient responsibility with respondent to warrant holding respondent accountable for his conduct whether or not it was within “the scope of [his] authority or contrary to the desires or instructions” of respondent. *N. L. R. B. v. Schaefer-Hitchcock Co.*, 131 F. (2d) 1004, 1007 (C. C. A. 9); *N. L. R. B. v. Montgomery Ward & Co.*, 133 F. (2d) 676 (C. C. A. 9); *N. L. R. B. v. Pacific Gas & Electric Co.*, 118 F. (2d) 780, 787 (C. C. A. 9); *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 520-521; *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 599.

case of General Manager Bothman's attempts to break the solidarity of the strikers, Swartz's offers of reinstatement were accompanied by disparaging remarks concerning the Union and threats that respondent would close the plant before it would sign a contract with the Union (R. 145-148, 178, 280-281). Swartz also predicted that "the Union [was] going to drop" them and that they would be left "holding the sack in a couple of weeks" (R. 147, 278, 280-281).

B. Conclusions concerning respondent's unfair labor practices

1. Respondent's violations of Section 8 (5) and (1) of the Act

a. The Union's majority status in an appropriate bargaining unit

Respondent employs approximately 110 employees in its production operations, of whom 10 are non-supervisory cutters who work in a separate part of the plant called the cutting room (R. 653-654, 133-134).⁶ Several other employees who perform no cut-

⁶ Respondent contended before the Board that it employed 12 cutters. One of these 12, however, was Louis Swartz, the foreman of the cutting room, whom the Board properly excluded from the unit because of his supervisory status (see p. 8, n. 5, *supra*). Another of the 12 was Robert Thain, a brother of Lettie Lee, president of respondent (R. 445-446), who was employed by respondent as a cutter prior to January 1941 (R. 451). At that time he left respondent's employ for an indefinite period of time because of his health, and did not return to work until December 1941 (R. 447-449, 450, 575). An examination of respondent's pay roll for the week ending July 25, 1941, shows 10 employees in the appropriate unit (Bd. Ex. 15 B). Thain's name was not carried on the pay roll for that period, although the name of Katherine Lembke, another employee who took a leave of absence in May 1941, was continued on the pay roll throughout her absence (Bd. Ex. 15, R. 324-325, 331, 681). Nor was Thain's name included in

ting operations, such as assorters or bundlers and a stock girl, also work in the cutting room (R. 134-135, 138, 171-174). Only qualified cutters, however, are eligible for membership in Local 84; consequently the union has confined its organizing efforts to respondent's cutters exclusively (R. 200-201, 213-214, 216, 225-226, 241). It does not appear that respondent's other production employees have any desire for affiliation with the Union.

The Board, upon the basis of the differentiation between the type of work performed by the cutters and respondent's other production employees, the extent of organization in the plant, the ineligibility to membership in Local 84 of respondent's other production employees, and the absence of a desire on the part of respondent's other production employees for membership in the Union or any other labor organization, rejected respondent's contention that all its production employees, or at least all the employees of the cutting room, constituted an appropriate unit. It found (R. 70) that respondent's cutters alone, excluding supervisory employees, constitute a unit appropriate for collective bargaining. The factors upon which the Board relied in so finding have been repeatedly held to constitute a proper basis for a unit determination. *Bussmann Mfg. Co. v. N. L. R. B.*, 111 F. (2d) 783, 785

the list of employees in the cutting department furnished to the Regional Office of the Board by respondent on September 11, 1941 (R. 585). On the above undisputed facts the Board's finding (R. 74) "that Thain was not an employee of the respondent on July 22, 1941," is manifestly sound.

(C. C. A. 8); *N. L. R. B. v. Calumet Steel Division*, 121 F. (2d) 366, 369 (C. C. A. 7); *N. L. R. B. v. Botany Worsted Mills*, 133 F. (2d) 876, 880 (C. C. A. 3), cert. denied May 17, 1943; *Marlin-Rockwell Corp. v. N. L. R. B.*, 116 F. (2d) 586, 587 (C. C. A. 2).⁷ Since the determination was neither arbitrary nor capricious, it may not be disturbed. *Pittsburgh Plate Glass Co. v. N. L. R. B.*, 113 F. (2d) 698, 700-701 (C. C. A. 8), aff'd 313 U. S. 146; *N. L. R. B. v. Carlisle Lumber Co.*, 94 F. (2d) 138, 143 (C. C. A. 9), cert. denied 304 U. S. 575; *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 789 (C. C. A. 9), cert. denied 312 U. S. 678; see also *Bussmann*, *Calumet Steel*, and *Botany* cases, *supra*.

The Union's majority status in the appropriate bargaining unit is not open to question. Six of the 10 cutters in the appropriate unit took the stand and identified cards signed by them on July 21, 1941, designating the International as their "sole representative in collective bargaining" with their employer (R. 124-125, 270-271, 293, 303, 309-310, 315-316). The Board thus properly found (R. 75) that on July 22, 1941, and at all times thereafter, the Union was the exclusive statutory representative of a majority of respondent's employees in an appropriate bargaining unit.

b. Respondent's refusal to bargain collectively with the Union

The evidence recounted above plainly compelled the Board's conclusion (R. 76-77) that "on July 22, 1941,

⁷ See also the Board's *Fourth Annual Report*, at p. 83; *Seventh Annual Report*, at p. 59.

and at all times thereafter the respondent by failing to respond to the Union's requests for a bargaining conference, and by its solicitation of strikers, as individuals, to return to work, refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit." Respondent's persistent refusal to meet with the Union and its failure even to reply to the Union's requests for collective bargaining were plain violations of Section 8 (5) of the Act. Likewise, in going over the head of the Union and attempting to deal with some of the strikers directly respondent breached its obligations under Section 8 (5) of the Act. *N. L. R. B. v. Biles-Coleman Lumber Co.*, 98 F. (2d) 18, 22-23 (C. C. A. 9); *N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862, 870 (C. C. A. 2), cert. denied 304 U. S. 576; *N. L. R. B. v. Lightner Publishing Corp.*, 113 F. (2d) 621, 625 (C. C. A. 7); *Valley Mould & Iron Corp. v. N. L. R. B.*, 116 F. (2d) 760, 762 (C. C. A. 7), cert. denied 313 U. S. 590; *N. L. R. B. v. Highland Shoe, Inc.*, 119 F. (2d) 218, 220-222 (C. C. A. 1).⁸

⁸ Respondent's unlawful refusal to bargain and its solicitation of strikers, as individuals, to return to work also constituted interference, restraint, and coercion in violation of Section 8 (1) of the Act, as the Board found (B. A. 77). As this Court has said concerning such individual solicitation, quoting from the opinion of the Second Circuit in *N. L. R. B. v. Acme Air Appliance Co.*, 117 F. (2d) 417, 420: "To permit the employer to go behind the chosen bargaining agent and negotiate with the employees individually, or with their committees, in spite of the fact that they had not revoked the agent's authority, would result in nothing but disarrangement of the mechanism for negotiation created by the Act, disparagement of the services of the Union, whether good or bad, and acute, if not endless, friction, which it

Respondent's belated defense that it refused to meet and bargain with the Union for the reason that it did not believe a unit confined exclusively to cutters was an appropriate unit within the meaning of Section 9 of the Act and for the further reason that it doubted that the Union represented a majority of the cutters is clearly without merit. Admittedly at no time during the period the Union was attempting to arrange a bargaining conference with respondent, did it make any mention of its alleged doubts either as to the appropriateness of a unit of cutters or to the Union's majority status among the cutters (R. 385, 683-684). Not until the hearing did respondent, for the first time, question the appropriateness of the unit and the Union's representation among the cutters. In view of respondent's whole course of conduct, particularly its repeated threats that it would close the plant rather than deal with the Union (*supra*, pp. 5, 7, 9), the Board was fully justified in concluding (R. 76), that

is the avowed purpose of the Act to avoid or mitigate." *N. L. R. B. v. Montgomery Ward & Co.*, 133 F. (2d) 676, 681. Respondent's questioning of prospective employees concerning their union membership (*supra*, p. 5, n. 2), its making of derogatory statements concerning the Union and union officials (*supra*, pp. 4, 7, 8, 9), and its threats to cease business rather than sign a contract with the Union (*supra*, pp. 5, 7, 9), constituted further interference, restraint, and coercion in violation of Section 8 (1) of the Act, as the Board found (R. 68). See, for example, *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 518; *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, 76-77; *N. L. R. B. v. Schaefer-Hitchcock Co.*, 131 F. (2d) 1004, 1005-1006 (C. C. A. 9); *N. L. R. B. v. Boswell*, decided May 24, 1943 (C. C. A. 9); *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 786 (C. C. A. 9), cert. denied 312 U. S. 678; *N. L. R. B. v. Oregon Worsted Co.*, 96 F. (2d) 193, 195-196 (C. C. A. 9).

“the real reason for [General Manager Bothman’s] refusal to respond to Sokol’s calls was respondent’s desire to avoid bargaining collectively with the Union as the representative of any of its employees” rather than “any bona fide doubt as to the appropriateness of the unit claimed by the Union” and that “its subsequent questioning the unit was merely an after-thought.” Here, as in *N. L. R. B. v. Biles Coleman Lumber Co.*, 98 F. (2d) 18, 22 (C. C. A. 9), in which the employer also made no objection to bargaining on the basis of the propriety of the unit, “The Board was entitled to draw the inference that respondent’s refusal to negotiate with the Union was motivated, not by doubt as to the appropriate unit, but by a rejection of the collective bargaining principle.” *N. L. R. B. v. National Motor Bearing Co.*, 105 F. (2d) 652, 660 (C. C. A. 9).⁹

In view of respondent’s complete negation of its obligations under the Act the Board was plainly justified in concluding (R. 77) that respondent’s “failure to reply to the Union’s requests” for a bargaining conference caused the strike which commenced on July 24, 1941, and that respondent’s persistent “refusal to deal with the Union” during the strike and its attempts

⁹ See also *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 789 (C. C. A. 9), cert. denied 312 U. S. 678; *N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862, 868–869, cert. denied 304 U. S. 576; *N. L. R. B. v. Clarksburg Publishing Co.*, 120 F. (2d) 976, 980 (C. C. A. 4); *Stewart Die Casting Corp. v. N. L. R. B.*, 114 F. (2d) 849, 854 (C. C. A. 7), cert. denied 312 U. S. 680; *N. L. R. B. v. Wm. Tehel Bottling Co.*, 129 F. (2d) 250, 254 (C. C. A. 8).

“to persuade its employees to abandon the strike and * * * to split the ranks of the strikers by stating that it would take back some but not all, of them * * * served to prolong the strike.”

2. Respondent's violations of Section 8 (3) and (1) of the Act

a. Respondent's discriminatory refusal to reinstate the strikers

The Board found (R. 80) that “on or about September 10, and thereafter, the respondent, by refusing to reinstate its striking employees [naming them], discriminated in regard to their hire and tenure of employment, thereby discouraging membership in the Union and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.” This finding is compelled by the evidence.

As we have shown, the Union on September 9 and 13, notified respondent by letter that the striking employees were ready and willing to return to work and requested their reinstatement.¹⁰ Respondent failed even to answer these letters. Subsequently, in October, respondent offered Cimarusti, Quinn, and Berteaux, three of the six striking employees, reinstatement “as individuals” and at the same time made it clear that it would not reinstate the other three.¹¹ This offer was rejected by the three strikers because of respondent's refusal to reinstate their colleagues and its persistent refusal to recognize

¹⁰ The striking cutters were Cimarusti, Quinn, Baliber, Berteaux, Costella, and Sardo.

¹¹ These three were Baliber, Costella, and Sardo.

and bargain with the Union (*supra*, p. 8). Since the strike was caused and prolonged by respondent's refusal to bargain collectively with the Union and its other unfair labor practices (see pp. 6-7, 8-9, *supra*), respondent was obligated to reinstate the strikers upon application, even though to do so necessitated the removal of the employees hired to replace them; its failure to reinstate the strikers on or about September 10 clearly warranted the Board in finding that respondent had engaged in anti-union discrimination in violation of Section 8 (3) of the Act.¹² *N. L. R. B. v. Grower-Shipper Vegetable Ass'n*, 122 F. (2d) 368, 378 (C. C. A. 9); *M. H. Ritzwoller Co. v. N. L. R. B.*, 114 F. (2d) 432, 437 (C. C. A. 7); *Rapid Roller Co. v. N. L. R. B.*, 126 F. (2d) 452, 460, 461 (C. C. A. 7), cert. denied 317 U. S. 650; *United Biscuit Co. v. N. L. R. B.*, 128 F. (2d) 771, 774 (C. C. A. 7); *N. L. R. B. v. Remington Rand, Inc.*, 130 F. (2d) 919, 927-928 (C. C. A. 2); cf. *N. L. R. B. v. Montgomery Ward & Co.*, 133 F. (2d) 676 (C. C. A. 9), enf'g 37 N. L. R. B. 100, 131-132; *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 792 (C. C. A. 9), cert. denied 312 U. S. 678.

Respondent sought to explain its failure to offer reinstatement to Sardo upon the ground that he had been convicted of a felony (R. 824-825). Although the fact of Sardo's conviction came to the attention

¹² The Board, taking cognizance of the fact that Cimarusti, Quinn, and Berteaux refused respondent's offer of reinstatement in October, treated them as having resumed the status of strikers and in the order relieved respondent of the obligation to pay back pay to these employees during the period they maintained this status (R. 81, 83-84).

of General Manager Bothman shortly after the strike began (R. 630, 792), respondent in its answer to the Board's complaint herein made no claim that Sardo was not reinstated for this reason, but on the contrary alleged that it had "at all times been and now is ready and willing to allow and permit said employees to return to their work" (R. 15, 692-693). Respondent advanced no explanation for its refusal to offer reinstatement to Baliber and Costella other than the fact that it had no vacancies available for them, an explanation which is palpably false.¹³ In view of the spuriousness of the excuse offered for the failure to reinstate Sardo, the absence of any valid explanation for the refusal to reinstate Baliber and Costella, and respondent's persistent efforts to subvert the Union and to effect the return of some of the strikers as individuals, the Board was fully justified in concluding (R. 80) "that Sardo's criminal record was not in fact the reason for refusing his reinstatement, but that the respondent was unwilling to reinstate any of its striking employees unless they returned to work as individuals and not as a group represented by the Union, and was seeking to rid itself of some of the

¹³ The record affirmatively shows that respondent employed at least four new cutters during the strike (R. 325-328, 332-333; cf. 346-348), whom respondent was obligated to discharge, if necessary, to make room for the strikers (see p. 16, *supra*), and that despite the employment of these four new cutters, respondent still had sufficient need for cutters to require, in addition, the services of Cimarusti, Quinn, and Berteaux, three of the striking cutters (see pp. 7-8, *supra*).

strikers completely.” Cf. *N. L. R. B. v. Blanton Co.*, 121 F. (2d) 564, 570 (C. C. A. 8); *Eagle-Picher Mining & Smelting Co. v. N. L. R. B.*, 119 F. (2d) 903, 915 (C. C. A. 8).

POINT II

The Board's order is valid

Paragraphs 1 (a), (b), and (c) of the order (R. 87-88) requiring respondent to cease and desist from the specific unfair labor practices found and to cease in any other manner from interfering with its employees in the exercise of their right to self-organization and collective bargaining are unquestionably valid upon the facts of this case. *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265; *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426, 432-438.

Paragraph 2 (a) of the order (R. 88) directing respondent upon request to bargain collectively with the Union is the normal remedial order entered upon findings of a refusal to bargain. Similarly, paragraph 2 (b) (R. 88) requiring respondent to offer reinstatement or placement upon a preferential list to the three striking employees whom respondent discriminatorily refused to reinstate, paragraph 2 (d) (R. 89) requiring respondent to make these employees whole for their losses resulting from respondent's unlawful discrimination against them, and the first part of paragraph 2 (e) (R. 89) requiring respondent to make whole the other three striking employees for their losses during the period between respondent's discriminatory refusal to reinstate them and their rejec-

tion of respondent's offer of reinstatement, are the "conventional" remedial requirements entered upon findings of antiunion discrimination in violation of Section 8 (3) of the Act. *Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, 187.

Paragraph 2 (c) (R. 88) and the second part of paragraph 2 (e) (R. 89) directing respondent upon application, to offer reinstatement or placement on a preferential list to the three striking employees who, subsequent to respondent's discriminatory refusal of their applications for reinstatement, were offered and refused to accept reinstatement, with back pay commencing 5 days after any further refusal of their applications for reinstatement, are clearly proper remedial provisions under the circumstances of this case. As we have shown (*supra*, p. 8), these employees refused respondent's offer of reinstatement because of respondent's unfair labor practices, namely, its refusal to reinstate all of the strikers in a group and its continued refusal to bargain with their chosen representatives. As unfair labor practice strikers these employees were entitled, in the absence of some valid reason for discharge, to reinstatement upon application, and back pay from any refusal of their application for reinstatement, as was ordered in the above-mentioned paragraphs. See cases cited on p. 16, *supra*.

Paragraphs 2 (f) and (g) (R. 89-90) requiring the posting of appropriate notices and the filing of the requisite compliance reports are of settled validity..

CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence, that the Board's order is wholly valid, and that a decree should issue affirming and enforcing said order in full.

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National Labor Relations Board.

MAY 1943.

APPENDIX

The relevant portions of the National Labor Relations Act are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a

group of employees shall have the right at any time to present grievances to their employer.

SEC. 10 * * *

(c) * * * If * * * the Board shall be of the opinion that any person * * * has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

No. 10382.

IN THE

United States Circuit Court of Appeals ⁴

FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

LETTIE LEE, INC.,

Respondent.

BRIEF OF RESPONDENT, LETTIE LEE, INC.

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FILED

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PAUL P. O'BRIEN,
CLERK

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IN THE

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NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

LETTIE LEE, INC.,

Respondent.

BRIEF OF RESPONDENT, LETTIE LEE, INC.

The Issues.

The principal issues involved in the within proceeding are:

1. Are the cutters, slopers and trimmers the appropriate unit for collective bargaining;
2. Does the Union represent a majority of the unit; and
3. Has respondent been guilty of unfair labor practices.

The Board found that a unit consisting of all cutters, slopers and trimmers is appropriate [R. 74] and that the Union has a majority within the said unit [R. 75], and that respondent has been guilty of unfair labor practices.

We believe a brief statement of facts will be of assistance in determining the legal issues involved.

Statement of Facts.

Respondent is engaged in the business of manufacturing and selling ladies' dresses. It employs in connection with its manufacturing operations approximately between 115 and 120 persons. [R. 590.] These are divided generally into cutters, operators, pressers, examiners, drapers, cleaners, pinkers, finishers, designers and others engaged in the actual production and manufacturer of what eventually is the finished product manufactured by respondent. [R. 653; 592-608; 493-494; 513-523.] These employees are exclusive of office and clerical help and other employees engaged in non-productive functions.

The cutting department consists of an area partially enclosed by a partition approximately six or seven feet in height and open at one end. This partition does not extend from the floor to the ceiling. Within this area are the cutting tables and shelves upon which the materials are kept and the tools and instruments used by the cutters in the performance of their duties. [R. 593-594; 497-498.]

The persons working in the cutting room may be classified as follows:

Men cutters—Louis Swartz, Vito Cimarusti, Angelo Costella, Mort Litwin, Joe Sardo, Louis Baliber, Don Quinn, Nolan Berteaux and David Thain;

Slopers and Trimmers—Eunice Usher, Dorothy Richard and Katherine Lembke [R. 135; 137-138; 297];

Assorters or Bundlers—Sarah Giochetti, Marie Chavez, Frances Avila and Saloma Sesma [Resp. Ex. 3-C, R. 585]; and in addition to the foregoing, a stock girl whose duties are to supply the cutters with the various materials required by them. [R. 550.]

The evidence shows that the duties of the assorters or bundlers were to take the various pieces of cloth after they have been cut by the cutters, to assemble them correctly, to mark them accurately, to tie the various component parts of the garment into a bundle (from which the term "bundlers" is doubtlessly derived) so that when the various pieces reach the operators, the same would be ready to be sewn or assembled. The evidence clearly shows that the work of the bundlers is of extreme importance, and that if the bundlers do not correctly assemble the various portions or pieces cut by the cutters, that the garments will be incorrectly assembled and will be absolutely useless. [R. 494-496; 599-601; 548-549.]

We ask the court to bear in mind the testimony of Louis Swartz and of Samuel Bothman, the Secretary-Treasurer of respondent. Both of these witnesses testified in great detail as to the manner in which the operations of Lettie Lee, Inc., are conducted in respect to the manufacturing of ladies' garments. They testified that each production unit is entirely and completely dependent upon every other production unit; that the cutters do nothing more than cut material from a marker or pattern; that this operation is simply the placing of a marker upon the material, tracing around the same with a piece of chalk and cutting on the line so marked. When the cutters have completed their cutting operation, they have nothing but numerous pieces of cut cloth. These pieces go first to the assorters or bundlers, as previously stated, then to the operators, then in various and successive stages to the drapers, pinkers, examiners, cleaners, finishers, pressers and the various other component parts of the factory. We believe it is a fair statement that if any one of these various units or operations was eliminated, we would have no

finished product. Each depends upon the other, and each requires the work of skilled employees. [R. 496-497.]

Mr. Bothman also testified that in keeping with modern principles and methods in the dress manufacturing industry, respondent is so set up that the various operations required in the manufacture of a dress are assigned to those best qualified to perform that particular function; that no one man or woman performs all of the functions or even a small part of all of the functions necessary to the complete manufacture of a garment; that this system tends towards specialization and increases substantially the productive output of the factory, and that without such system it would be impossible for respondent to compete with the eastern manufacturers. [R. 658-667.]

Mr. Bothman also testified that the cutters no longer perform the functions or occupy the position of the cutters of fifteen, twenty or twenty-five years ago. [R. 594-596; 660-664.] Mr. George Wishnak, a representative of the International Ladies' Garment Workers' Union, testified on behalf of the Union that in the early days of the garment industry, the cutters were considered as the most highly skilled of all the garment workers; that they designed the dress, made the patterns, cut the material, and, in fact, saw the operation through from beginning to end. The obvious purpose of his testimony was to leave the impression that the cutters today occupy the same position in the industry and are in a class entirely by themselves above and beyond the other production workers in the factory.

Mr. Bothman testified that respondent's factory as it is set up and geared to function does not require high-grade or skilled cutters for the reason that its cutters are what are known in the trade as "choppers" [R. 596-597]; that their sole function is to mark the material from a marker and to cut around the lines so marked; that this function requires only the ability to cut around the chalk lines and to use the shears or the power cutting knife, the usual tools of the trade. It is for this reason that one man is given the responsibility of grading the patterns. This man was Louis Swartz and, when the volume of work justified it, he was assisted by Miss Usher. [R. 664.] None of the other cutters were required to have this skill or ability [R. 665], and none of the other cutters did any grading nor were the cutters required to make markers except upon rare and isolated occasions, and the work of making the markers was assigned to Mort Litwin. It thus clearly appears that with the exception of Swartz, Litwin and Miss Usher, the work required of the cutters was not highly skilled or specialized, and that they were simply choppers as that term is defined in the trade. [R. 597.]

It is the position of respondent that in determining the appropriate bargaining unit, the entire plant and all of the production employees of respondent must be taken into consideration. As the total number of production employees is substantially in excess of 100 (approximately 115 or 120), it is obvious that the Union, representing only six of the cutters, does not even begin to represent a majority of the production employees. We believe that

the authorities bear out our position that in a factual situation such as is here presented, the entire factory and all of the production employees constitute the appropriate bargaining unit, and that a small minority group such as the cutters, slopers and trimmers, is not the appropriate unit.

The respondent contends further that if the court should be disposed to hold that all of the production employees do not constitute the proper bargaining unit, that then the appropriate unit is the cutting room or cutting department of respondent's factory. This unit, as previously pointed out, consists of nine men, three women, and the four assorters or bundlers, a total unit of sixteen persons. As the Union represents only six out of this total of sixteen, it falls short of having a majority.

If the court should conclude that the bundlers or assorters are not to be considered in determining the unit appropriate for bargaining, and that the appropriate unit consists of the cutters, the slopers and trimmers, as found by the Board, then respondent submits that this unit consists of twelve persons, namely, the six members of the Union referred to in the complaint on file, the three women, Eunice Usher, Dorothy Richard and Katherine Lembke, and Louis Swartz, Mort Litwin and David Thain (on leave of absence at the time of the strike). As the Union represents only six of this group, it does not have a majority.

With respect to David Thain, the record shows that he is the oldest cutter in the employ of respondent [R.

446]; that in the month of January, 1941, he requested a leave of absence because of ill health; that the leave of absence was granted him; that he was told that whenever he returned, his old job would be open; that he returned to work in the month of December, 1941, resumed his former duties and is still in the employ of respondent. [R. 447-450; 576.] The record will further show that he did not engage in any other employment between January and December, 1941; that he went to his mother's ranch in Texas where he assisted with the work about the ranch and, as he testified, helped with the milking and other usual and customary ranch duties; that his purpose was to rest and improve his health, which he did, and having regained his health, he returned to his old job. [R. 452-454.] Under these circumstances, David Thain remained an employee while on leave, and must be counted as an employee of respondent for our purposes. The Board's finding to the contrary is unsupported by the evidence.

As to Katherine Lembke, the record shows and the Board has found that she was an employee of respondent on the date of the strike, July 22, 1941, although on a leave of absence for the summer. [R. 74.]

As to Miss Richard, the record is uncontradicted that she commenced her employment in June, 1941, and remained in the employ of respondent until sometime in December, at which time she left and has not since returned. It should be noted that she gave up her work at that time for the reason that she was expecting a child and decided to devote her time thereafter to her family. [R. 502-506.] It is clear without the citation of author-

ity that Dorothy Richard, having been continuously in the employ of respondent from June, 1941, to December, 1941, must be considered as an employee for our purposes, and the Board so found. [R. 74.]

Considering, therefore, that on the date of the strike, July 22, 1941, there were twelve cutters, slopers and trimmers in the employ of respondent, namely the six members of the Union who went on strike and who are specifically referred to in the complaint, *i. e.*, Baliber, Berteaux, Costella, Cimarusti, Quinn and Sardo; the three women Usher, Lembke and Richard; and Swartz, Litwin and Thain, it is obvious that the Union does not represent a majority. No contention is made that it represents any other than the six persons referred to in the complaint. Therefore, assuming without conceding that the cutters, slopers and trimmers constitute the appropriate unit, as found by the Board, the Union represents but fifty per cent of this group and falls short of a majority by the margin of one per cent. Although the proposition is self-evident, we will presently cite authorities to the effect that a majority requires at least fifty-one per cent of the unit claimed to be appropriate. Therefore, on any theory, whether the appropriate unit is the entire plant and all of the production employees of respondent (approximately 120 persons), or the entire cutting department (including the bundlers), and consisting of a total of sixteen persons, or the cutters, slopers and trimmers, as found by the Board, consisting of twelve persons, the Union does not have a majority.

ARGUMENT AND POINTS AND AUTHORITIES.

I.

A Unit Consisting of the Cutters, Slopers and Trimmers Cannot Be the Appropriate Unit, as the Evidence Shows That Slopers and Trimmers Are Not Admitted to Membership in Cutters Local No. 84 of International Ladies' Garment Workers' Union.

The unit found by the Board to be appropriate consists of all of the cutters, slopers and trimmers. The slopers and trimmers are Eunice Usher, Dorothy Richard and Katherine Lembke. [R. 135; 137-138; 297.] Slopers and trimmers are not admitted to membership in the Union. Harry Scott, organizer and cutters representative, so testified. [R. 201.] His testimony is as follows:

“Q. Now, there has been some testimony here concerning an employee who performs what they call a sloping operation. Do employees who perform sloping operations,—are they taken into the cutters union? A. No, sir.

Q. And why not? A. Because of their lack of ability to do anything other than that.

Q. You don't recognize them as cutters? A. No, sir.

Q. I think there has been some testimony about trimmers. Are trimmers taken into your organization? A. At one time, when we were taking in assistant cutters, we attempted to consider trimmers, but that was overruled and trimmers are not classified as properly qualified to be cutters.

Q. And that is the situation at the present time? A. Yes.”

George Wishnak, organizer for and representative of the International Ladies' Garment Workers' Union, and in charge of the dress department, testified to the same effect. [R. 226.] His testimony is as follows:

“Q. Are you familiar with the job of sloping?

A. Yes, sir.

Q. Do you know what that is? A. Yes, sir.

Q. Do you know whether or not a sloper is admitted to the Cutters Local? A. No, sir.

Trial Examiner Erickson: Read that question and answer, please.

(The question and answer were read.)

Trial Examiner Erickson: What is your answer now? You don't know?

The Witness: No. I say they are not admitted.

Trial Examiner Erickson: All right.

Q. (By Mr. Nicoson.) Are you acquainted with the trimmer? A. Yes, sir.

Q. Do you know what that means? A. Yes, sir.

Q. Are trimmers admitted to the Cutters Local?

A. They are not.”

Both Scott and Wishnak were called by the Board as witnesses for and on behalf of the Board, and the foregoing testimony was given on their direct examination.

The slopers and trimmers, Usher, Richard and Lembke, according to the uncontradicted testimony of the Board's own witnesses, are not eligible to membership in the Union found by the Board to be the representative of the appropriate unit. It is inconceivable upon what theory this finding can be justified. It seems too plain for argument that if the slopers and trimmers are not admitted to membership, that the Union is not qualified to act as their representative. Any other conclusion is impossible.

II.

All Production Employees Consisting of Operators, Finishers, Pressers and Cutters Constitute the Unit Appropriate for Collective Bargaining.

Justin McCarty, Inc. (and companion cases), 36 NLRB 800;

S. Cohen and Sons, 4 NLRB 720-724;

Clinton Garment Company, 8 NLRB 775;

French Maid Dress Co., 5 NLRB 325;

Century Mills, Inc., 6 NLRB 807;

Solomon Mfg. Co., 3 NLRB 926;

Segall-Maigen, Inc., 1 NLRB 740.

The foregoing cases involve employers engaged in the business of manufacturing ladies' garments, as is respondent here. No attempt has been made to cite the countless other decisions of the Board, involving other trades and industries, in which it has been held that all production employees constitute the appropriate bargaining unit.

In the three companion cases of *Justin McCarty, Inc.*, *Morton Davis Co.*, doing business as *Donovan Mfg. Co.*, and *Kohen-Ligon-Folz, Inc.*, 36 NLRB, page 800 *et seq.*, decided Nov. 10, 1941, the identical issue was presented. The cutters' local of the International Ladies' Garment Workers' Union (the same Union as is here involved) contended that the cutters constituted an appropriate unit. The respondent companies contended that all production employees constitute a single appropriate unit. The Board held that as the International had organized plants of the company's competitors on an industrial basis and had contracts with such companies for their production em-

ployees, that an industrial unit was appropriate for bargaining and that a unit restricted to cutters was inappropriate. The facts involved in *Justin McCarty, Inc., et al.*, are identical with those of the instant case.

It is submitted that the facts in the instant case do not warrant a finding that the cutters alone constitute the appropriate unit, and that on the contrary, in determining the unit that all production employees, including cutters, operators, pressers, examiners, drapers, cleaners, pinkers and finishers, should be considered, as was held in the *Morton Davis Co., Justin McCarty, Inc.* and *Kohen-Ligon-Folz, Inc.*, cases.

The result of the strike called on July 24, 1941, conclusively demonstrates that only approximately twenty out of approximately one hundred twenty of respondent's production employees were in sympathy with the Union and the strike; that one hundred of its employees did not leave their work; that only six out of all of respondent's employees are represented by the Union. [R. 654, 655.] It seems manifestly unfair to require respondent to bargain with an organization representing only one-twentieth of the total production employees of its factory.

It is submitted that to require respondent to bargain with an organization representing such an infinitesimal part of respondent's total production employees would not be in furtherance of the objects and purposes of the National Labor Relations Act.

Counsel for the Board, at page 13 of their brief, state that the question of the appropriateness of the unit was not raised by respondent until the hearing. This is not a correct statement. Respondent's letter of September 11, 1941, to D. C. Sargent, Field Examiner of the National Labor Relations Board [Resp. Ex. 3A, R. 582, 583], ex-

pressly states that respondent considers its entire shop as a unit appropriate for the purpose of collective bargaining, and that it does not consider the cutters as a separate unit. This letter was written in reply to Mr. Sargent's letter of August 13, 1941 [Resp. Ex. 2A and 2B, R. 579, 580, 581], in which letter respondent was asked to state its position concerning the question of the unit. The statement in petitioner's brief that the inappropriateness of the unit claimed by the Union was an afterthought and not raised until the time of trial is clearly contrary to the evidence.

One further point should not be overlooked. The unit claimed by the Union to be appropriate has always been one consisting of the cutters only and Sokol's letters to respondent in which he requested respondent to bargain with the Union stated that the Union claimed to be the representative of the cutters. [Board's Ex. 7, 8 and 9, R. 251, 255 and 257.] The Union has never claimed or contended that the proper unit was one consisting of cutters, slopers and trimmers, as found by the Board. In fact, it could not, as slopers and trimmers are not eligible to membership in the Union. (See Point I, page 9 hereof.) Consequently, even if we assume that respondent refused to bargain with or recognize the Union as representative of the cutters, its refusal so to do was not an unfair labor practice as that unit, *i. e.*, the cutters alone, has not been found by the Board to be the appropriate unit. The Board has found that the appropriate unit is one consisting of cutters, slopers and trimmers. [R. 74.] Respondent was never requested to recognize or deal with such a unit. The Board has acknowledged this fact and has found that the appropriate unit is not the unit for which the Union has contended. [R. 76, not 15.] The

Board says this circumstance is immaterial. We submit that on the contrary, it is highly material and completely exonerates respondent of the necessity of recognizing or bargaining with the Union as the representative of its cutters.

III.

The Dependence of Each Production Unit Upon the Other Must Be Considered in Determining the Question of the Appropriate Bargaining Unit.

In the third annual report of the N. L. R. B., page 191, the following statement appears:

“The functional coherence and dependence of the various departments in mass production industry has often impelled the Board to treat all production and maintenance employees of a given company as a single unit.”

In the case of *Acklin Stamping Co.*, 2 NLRB 872, at 877, the Board stated:

“Although there is some measure of physical separation between the various departments in the plant . . . all function coherently in the completion of a specific order for goods. Each department in turn contributes its share of work to the filling of every order for goods.”

In the case of *Fleischer Studios*, 3 NLRB 207, at 211, it was held that where the final product depends on the work of all the departments, a single unit will be appropriate. Similarly, where perfect coordination is required between the various departments, it was held that a single unit was appropriate.

Columbia Broadcast Co., 6 NLRB 166, at 169.

In the *Goodyear Tire & Rubber Co.* decision, 3 NLRB 431, at 437, the Board held that the various departments of the employer need not be engaged in similar work in order to be included in a single unit if each department was essential to the proper functioning of the other.

In that case textile workers in a textile factory producing textiles solely for use in the manufacture of tires were included in a unit of rubber workers. In the *American Tobacco Co.* decision, 2 NLRB 198, the Board held that the departments should be separated only where they are entirely independent and can be operated independently of the rest of the plant.

In the *Fisher Body Corp.* decision, 7 NLRB 1083, at 1088, it was held that the fact that various departments in the employer's business are located in the same building is an important consideration in the determination of a single bargaining unit.

At page 14841 of *Prentiss-Hall Labor Service*, the rule is stated as follows:

“In determining whether or not to combine several departments into one bargaining unit or to set up separate units, the Board seriously considers the nature of the work performed in the various departments under consideration. The dependence of one department on another, the interchangeability of personnel and the working conditions of the department all play a part in the Board's determination.”

Respondent submits that the record in this case shows without contradiction that all of its operators are housed in one building; that each of its production departments is dependent upon the other; that no one department func-

tions separately or as an individual unit; that each department must function coherently with the other in the completion of the garment, and that the final production depends upon the work of all of the departments and not on any single unit. No one department can operate separately or entirely independent of the other. It is submitted that within the rule of the foregoing decisions, a single unit of all the production employees of respondent is the only appropriate unit for the purposes of bargaining.

IV.

Employees on Leave Retain Their Status as Employees.

In *United Casting Corp.*, 7 NLRB 129, at 132, the Board held that employees temporarily laid off retain their status as employees. To the same effect are the following Board decisions:

Robbins & Meyers, Inc., 7 NLRB 1119, at 1124;

National Distillers Products Co., 5 NLRB 862, at 865;

Minneapolis Moline Power Imp. Co., 7 NLRB 840, at 844;

National Weaving Co., 7 NLRB 916, at 919;

International Shoe Co., 14 NLRB 86.

The rule of the foregoing decisions definitely requires that David Thain be included in any computation of the employees in the cutting department, notwithstanding the fact that he was on temporary leave of absence. Counsel

for the Board, at page 9 of their brief, footnote 6, state that Thain's name does not appear on the payroll for week ending July 25, 1941 [Bd. Ex. 15B] and that it was not included on the list of employees of the cutting department forwarded to the Regional Office of the National Labor Relations Board on September 11, 1941 [Resp. Ex. 3C, R. 585], and therefore argue that Thain was not an employee on July 22, 1941.

Counsel has neglected to call the court's attention to Bothman's testimony that Thain's name was not on the July payroll for the reason that it was only carried through the first quarter for the purpose of the Social Security records, and as he was still on leave at the beginning of the second and third quarters, his name was not placed on the second quarter (July) payroll, but was restored to the payroll when he returned to work in December 1941. [R. 575.] The obvious reason for not including his name on Respondent's Exhibit 3C mailed to the Regional Office on September 11, 1941, is that he was still on leave at that time. The undisputed evidence shows he was on a leave of absence and that his job would be waiting for him upon his return. [R. 447-450; 452-454; 576.] The Board's finding to the contrary is not supported by the evidence.

V.

Where the Evidence Shows an Established Course of Dealing Between Employees in the Industry and the Union, Such Course of Dealing Is Determinative of the Question of the Appropriate Bargaining Unit.

The Board's attention is respectfully directed to the testimony of Mr. George Wishnak called as a witness on behalf of respondent on January 29, 1942, the last day of the hearing. Mr. Wishnak testified that he was a representative of the International Ladies' Garment Workers' Union [R. 733]; that this Union consists of approximately three hundred locals [R. 734]; that in Los Angeles the cutters are designated as local No. 84, the operators as local 96, the pressers as local 97, and the cloak operators as local 65. [R. 734.] He further testified that he was a representative of the Los Angeles Joint Board composed of said locals 84, 96, 97 and 65. [R. 735.]

A demand to produce the original of an agreement dated August 8, 1941, between the Dress Association of Los Angeles and the International Ladies' Garment Workers' Union and the Joint Board of the City of Los Angeles had been previously made by counsel for respondent upon Mr. David Sokol, attorney for the Union. This original was produced by Mr. Sokol and pursuant to agreement and stipulation of counsel, copies were permitted to be introduced in evidence in lieu of the original in order that the original signed instrument could be retained by the Union. [R. 736.] This agreement is Respondent's Exhibit No. 6. [R. 739-767.]

Paragraph 26 [R. 755] of the agreement specifically provides that “contracts made by the Union with employers who are not signatories to this collective agreement, shall not extend for a period longer than this agreement, *and shall be controlled by this exact agreement.*” (Emphasis ours.)

A reading of the agreement will show that it was entered into in order that dress manufacturers and the cutters, operators, pressers and cloak operator locals could deal and bargain on behalf of employees. It makes provision for wages, hours and working conditions of the cutters, operators, pressers and cloak operators. It clearly appears that as a result of the agreement of August 8, 1941 [Resp. Ex. 6] it is the practice in the industry in the City of Los Angeles that the Union negotiate on behalf of the four locals and not on behalf of the cutters alone. This is emphasized by paragraph 26 of the agreement, previously referred to, in which it is plainly stated that contracts made by the Union with employers who are not signatories to the agreement shall be controlled by “this exact agreement,” referring to Respondent’s Exhibit 6.

It should be borne in mind that the Union in this case is cutters local 84. None of the other locals, namely, the operators, pressers or cloak operators, are involved in this proceeding. The six employees named in the complaint on file are members only of the cutters local 84. It is apparent that in attempting to force respondent to bargain with this local, the Union is definitely departing from

the custom and practice in the City of Los Angeles, and the plain provisions of the agreement of August 8, 1941.

The rule has been stated by the Board as follows:

“The recognition through an established course of dealing between an employer and his employees that a certain group of employees should be treated together for the purpose of collective bargaining is an important consideration in the determination of the appropriate unit.”

3rd Annual Report, NLRB page 160.

In *Hyman-Michaels Co.*, 11 NLRB 796, at 798, the Board held that the formation of an employers association to deal with a Union which has successfully organized an industry on an industry-wide basis indicates that such industry-wide unit is appropriate for the purposes of bargaining.

In *American Steel & Wire Co.*, 5 NLRB 871, at 875, the rule is stated that *in determining the appropriate unit, we look not only to the history of collective bargaining with a particular employer, but also to the methods which have been used elsewhere in the same industry.*

A case strikingly similar in point of fact is that of *Sheba Ann Frocks*, 3 NLRB 97, at 100, in which the Board pointed out that it appeared from the evidence that the Union always negotiated for the four classes of employees under consideration as a group. The same is true in our case. It appears without contradiction that the International Ladies' Garment Workers' Union negotiates

through its Joint Board on behalf of locals 97, 96, 84 and 65, the operators, pressers, cutters and cloak operators. As stated in the *Sheba Ann Frocks* decision:

“The fact that an employers’ association deals with a Union for the employees of its various members is often an indication that the industry-wide employer unit is appropriate for the purposes of collective bargaining.”

It seems clear from the foregoing authorities that where the Union in dealing with other manufacturers in the industry has itself recognized that the cutters, operators, pressers and cloak operators taken together are the appropriate unit, and where this practice has resulted in a written agreement between the Joint Board of said locals and an association of dress manufacturers, that the question of the appropriate unit can be answered in only one way; that is, the proper unit is one consisting of each of the four crafts and not the cutters alone. The same situation was involved in the *Morton Davis Co., Justin McCarty, Inc.*, and *Kohen-Ligon-Folz, Inc.*, cases, reported in 36 NLRB, pages 169, 170 and 171. The Board there held that as the Union had organized competitors of respondents on an industrial basis, thereby acknowledging a plant-wide unit as ultimately appropriate for bargaining, that a unit of the cutters *alone* was not appropriate. These decisions are squarely in point with the instant case and respondent submits that the Board by its own precedents is compelled to hold that the claimed unit consisting solely of the cutters is inappropriate, particularly where, as here, respondent’s competitors have been and are being organized as the basis of a plant-wide unit, pursuant to the agreement of August 8, 1941. [Resp. Ex. 6.]

VI.

It is Not an Unfair Labor Practice for an Employer to Refuse to Bargain With an Organization Which in Fact Is Not the Authorized Bargaining Agency of the Employees.

The evidence clearly shows that on no possible theory is local 84, the cutters union, the proper and authorized bargaining representative of respondent's employees. This is true whether the bargaining unit be considered as all of the production employees of respondent, or all the employees of the cutting department, or all of the cutters, slopers and trimmers, as found by the Board. In neither case does the Union represent a majority.

The rule is stated in *Texarkana Bus Co. v. N. L. R. B.*, 119 Fed. (2d) 480 (C. C. A. 8), as follows:

“The employer cannot be required to devote his time to negotiating with every individual claiming to represent a bargaining unit, and cannot be charged with unfair practice in this regard unless there is presented to him evidence of a substantial character, showing that the representative is in fact an authorized bargaining agency.”

To the same effect is *Empire Furniture Co. v. N. L. R. B.*, 107 Fed. (2d) 92 (C. C. A. 6.)

As to whether or not the Union ever represented a majority, it is submitted that even if the cutters, slopers and trimmers alone are considered as the appropriate unit, which, however, is not conceded, the Union never represented a majority for the reason that there were twelve persons within this unit, namely, the nine men and the three women, and the Union represents only six,—or fifty per cent. It has been held by the Board in the

matter of *Monte Glove Co., Inc.*, 17 NLRB 25, that fifty per cent does not constitute a majority and that more than fifty per cent or at least fifty-one per cent is needed for a majority.

VII.

Respondent Cannot Be Required to Reinstate Joe Sardo by Reason of His Having Been Convicted of a Felony.

Joe Sardo, one of the persons named in the complaint, admitted that he was convicted of a felony, to-wit, grand larceny, in the State of Wisconsin, and was sentenced to and served a term of fifteen months. [R. 318.] The record will further show that the crime of grand larceny for which Sardo was convicted consisted of the stealing of twenty suits of clothes of the value of \$400.00, said clothes being the property of Sullivan Brothers. [R. 630.] On the day that Sardo testified and admitted his conviction [R. 318], respondent did not have available certified or exemplified copies of the record of conviction. Later in the proceedings, however, this record was obtained and was offered in evidence, but was refused upon the ground that it would be cumulative. [R. 631-632.] The trial examiner expressed some question as to the materiality of this evidence. There can be no doubt as to the materiality and admissibility of evidence of conviction of a felony. It is one of the methods of impeaching a witness. It is so provided by *Section 2051 of the Code of Civil Procedure of the State of California*, which reads as follows:

“A witness may be impeached by the party against whom he was called by contradictory evidence or by evidence that his general reputation or truth, honesty or integrity is bad, but not by evidence of particular

wrongful acts, *except that it may be shown by the examination of the witness, or the record of the judgment that he has been convicted of a felony.*"
(Emphasis ours.)

The witness, Joseph Sardo, therefore, stands impeached by his own admission that in 1937, in the State of Wisconsin, he was convicted of the crime of grand larceny, a felony, and accordingly his testimony should be entirely disregarded.

The fact that Sardo has been convicted of a felony is important for another reason. The rule is well settled by decisions of the Circuit Court of Appeals that an employee convicted of a felony or even of a lesser crime is not entitled to reinstatement, and that an employer has the right to refuse to re-employ or reinstate one who has been convicted of a crime. Nor is it necessary, under the decisions, that the conviction arise out of any act or occurrence committed during the course of the current labor dispute.

In the case of *N. L. R. B. v. Federal Bearings Co.*, 109 Fed. (2d) 495 (C. C. A. 2), the court stated as follows:

"It (the conviction of the crime of petty larceny) is also justification for refusing to reinstate an employee wrongfully discharged under the Wagner Act. See *Labor Board v. Fansteel Corp.*, 306 U. S. 240, at 255."

It should be noted that in the *Federal Bearings* case above referred to, conviction of the crime of petty larceny was held to be sufficient justification for refusing to reinstate an employee. Surely there can be no question but that a conviction of grand larceny, a felony, would be even more justification for such refusal.

The same rule has been announced in *Standard Lime & Stone Company v. N. L. R. B.*, 97 Fed. (2d) 531 (C. C. A. 4), at 535, in which the court states that an employee convicted of a felony is not entitled to reinstatement.

In the matter of *Chesapeake Shoe Co.*, 12 NLRB 832, at 846, the Board announced the same rule, namely, that the criminal record of an employee was sufficient justification for the employer's refusal to reinstate the employee in question.

The decisions have gone even further and have held that an employee guilty of violent and unlawful conduct is not entitled to reinstatement.

See:

Wilson & Co. v. N. L. R. B., 120 Fed. (2d) 913 (C. C. A. 7); and

Nevada Consolidated Copper Co. v. N. L. R. B., 122 Fed. (2d) 587 (C. C. A. 10).

It seems too plain for argument that to force an employer to take back a man who he has recently learned has been convicted of the crime of grand larceny would not only be violative of the rules set out in the foregoing decisions, but would deprive the employer of the right to insist that those working for him be honest and law-abiding citizens and not felons and ex-convicts.

Mr. Bothman testified that he first learned of the fact that Sardo had been convicted of a felony a few days after the commencement of the strike on July 24, 1941; that he did not know of the fact previous to that time, and that his refusal to offer reinstatement to Sardo was because of the fact that he had learned that Sardo had been convicted of the crime of grand larceny. [R. 630, 632, 824-825.] The finding that Sardo's criminal record

was not the reason for refusing him reinstatement [R. 80] is not supported by the record; in fact, it is diametrically opposed to the uncontradicted evidence. It is submitted that respondent was entirely justified in its refusal to reinstate or re-employ Sardo, by reason of his conviction of a felony, and that it cannot and should not be compelled to reinstate him.

VIII.

The Alleged Unfair Labor Practices.

The complaint charges respondent with having sought to ascertain whether persons seeking employment with it were interested in or affiliated with any labor organization. In this connection, it is significant to note that not one witness testified that Bothman or anyone else ever stated that they would not be hired if they belonged to a union, or that they would be discharged if they joined a union. The only witness who testified that he was asked whether or not he belonged to a union was Cimarusti. He admitted, however, that Bothman did not tell him that he would not be employed if he belonged to a union, or that he would be discharged if he joined a union. [R. 151, 158.]

Quinn did not testify that he was questioned concerning the Union prior to his employment, nor did Berteaux or Costella or Sardo. On the contrary, Costella stated on cross-examination that no one ever told him that he would not be hired if he belonged to the Union, or that he would be fired if he joined. [R. 312-313.] Sardo was not asked concerning this subject and gave no testimony on the point.

Baliber testified that he had been a member of the Union since 1926, and that he belonged to the Union

when he went to work for respondent in November, 1939. [R. 303.] He testified on cross-examination that although he was a Union member at the time he was hired, that no one ever questioned him about the Union, and no statement was ever made to him that he would not be hired if he belonged to the Union, or that he would be fired if he subsequently joined. [R. 307.]

Bothman denied positively that he ever made any anti-union statements. [R. 634, 635, 647, 648.] In this condition of the record, it is submitted that subdivision (a) of paragraph 9 of plaintiff's complaint, in which it is charged that respondent sought to ascertain and ascertained whether persons seeking employment with it were interested in or affiliated with any labor organization, is not supported by the evidence.

In this connection, we call the court's attention to the case of *Press Co., Inc. v. N. L. R. B.*, 118 Fed. (2d) 937 (Dist. of Columbia), in which it is held that although the editorial director of the employer's newspaper referred to the union as a "God damn union" and called its members "rats," and otherwise made known his bias against union, that nevertheless, as it did not appear that the employees had anything to fear because of their union activities or that any threats of discharge were made, that a finding of unfair labor practice and interference with the right of employees to organize was not supported by substantial evidence. In our case, the record is absolutely barren of any testimony that Bothman or anyone else ever stated to any person that they would not be hired if they belonged to a union, or that they would be discharged if they joined a union. Consequently, as in the *Press Co., Inc.* case, it does not appear that any of the employees had anything to fear because of the union ac-

tivities or that use was made of the economic threat of discharge. Consequently, the finding of unfair labor practices and of interference with the right of employees to self-organization is not sustained by substantial or any evidence.

Counsel for the Board lay considerable stress upon two meetings of the men cutters on June 11 and June 13, 1941, respectively. It is significant to note that Vito Cimarusti testified in considerable detail as to statements alleged to have been made by Samuel Bothman, secretary of respondent corporation, in which the Union and its officials were claimed to have been vilified and generally referred to in a derogatory manner. Don Quinn testified substantially to the same effect. At both of these meetings, all six of the cutters named in the complaint were present and in addition, Mort Litwin and Louis Swartz. Litwin and Swartz denied that such statements were made by Bothman. [R. 468, 469, 470, 471, 477, 478, 529, 530, 531.] Bothman himself denied that he made such statements. [R. 634, 635.] To this point we have a clear conflict in the evidence which possibly could be resolved by the Board either in favor of or against respondent. However, it should be borne in mind that although the other cutters named in the complaint, namely, Baliber, Berteaux, Costella and Sardo, were called to the stand by counsel for the Board, *they were not asked one single question as to what conversations took place at these meetings or what was said by Mr. Bothman, and they did not testify at all as to any of the statements claimed to have been made by Bothman, as testified to by Cimarusti and Quinn.*

It is apparent that the four cutters referred to were not asked concerning these alleged remarks of Bothman's,

and gave no testimony on the point for the reason that such statements were never made by Bothman. Counsel for the Board or for the Union would certainly have called upon Baliber, Berteaux, Costella, and Sardo to corroborate the testimony of Quinn and Cimarusti if they were able to do so. They were not asked the questions and they gave no such testimony. It is submitted that there is no substantial evidence to support the charge in the complaint or the findings of fact with respect to the alleged derogatory statements made by Bothman.

A. RESPONDENT IS NOT BOUND BY THE ALLEGED STATEMENTS OR ACTIVITIES OF LOUIS SWARTZ.

It is charged in subdivision (b) of paragraph 9 that Swartz likewise made derogatory statements concerning the Union and labor organizations generally. At the hearing, objection was made to any testimony concerning statements or conversations by Louis Swartz upon the ground that he was not an officer, agent or representative of respondent, and that he had no authority to bind respondent by any statements or declarations, and that any such statements or declarations made by him not in the presence of an officer, agent or representative of respondent were hearsay. Swartz was a cutter in the employ of respondent occupying no different position than any of its other cutters, and respondent certainly is not bound by any expressions of opinions made by its employees. The objections were overruled and the questions were permitted and the answers allowed to stand. It is submitted, however, that such testimony was clearly hearsay and not binding on respondent and that there is not one scintilla of evidence in the record purporting to show any authority, express or implied, on the part of Swartz to

make any of the statements or declarations attributed to him. On the contrary, the uncontradicted testimony of Swartz and of Bothman shows that he had no such authority. Swartz testified as follows [R. 536]:

“Q. Did you tell Mr. Bothman that you were going to ask Mr. Quinn to come out to your house to talk to him? A. No, I hadn’t.

Q. Did Mr. Bothman have any idea that you had done that? A. No.

At page 538:

“Q. Prior to sending the message to Mr. Quinn and prior to talking to him, had Mr. Bothman asked you to contact any of the boys or talk to them? A. No, he hadn’t.

Q. Had any other officer or representative of Lettie Lee, Inc., asked you to do that? A. No.

Q. After talking to Mr. Quinn, did you at any time tell Mr. Bothman what you had done? A. Yes, after the following day I told Mr. Bothman what I had done.

Q. What did Mr. Bothman say? A. Well, he asked me why I did it. And I said that regardless of what he thinks, I still think that Don Quinn was just swayed by the mob, and that if he was sorry, that he would come back to work. I thought personally that he did want to go back to work, but he was just afraid.

Q. What did Mr. Bothman say?

* * * * *

Q. (By Mr. Shapiro.) What did Mr. Bothman say after you had told him that you had talked to Mr. Quinn? A. *Well, he told me I shouldn’t have done it.*” (Emphasis ours.)

At page 540:

“Q. Did you tell Mr. Bothman that you were going to talk to Mr. Cimarusti? A. No, I didn’t tell him at this time, but just when I got through with the call, Mr. Bothman walked over, and he happened to hear the tail end of the conversation. And I told him who I had called and what I had done.

Q. What did he say? A. Well, he just didn’t say anything. He walked away. I probably would have gotten the same answer as the first time I told him.”

Bothman did not approve of Swartz’ conduct.

At page 539:

“Q. (By Mr. Shapiro.) What did Mr. Bothman say after you had told him that you had talked to Mr. Quinn? A. *Well, he told me I shouldn’t have done it.*” (Emphasis ours.)

Bothman never authorized Swartz to talk to any of the men concerning union activities and, in fact, told him it was none of his business.

At page 648:

“Q. (By Mr. Shapiro.) Now, Mr. Swartz has testified that he talked to Mr. Quinn at his home. Did you know that Mr. Swartz was going to talk to Mr. Quinn? A. No, I didn’t, but I know he did talk to him, because he told me of it later on.

Q. Did Mr. Swartz tell you before he spoke to Mr. Quinn that he was going to talk to him about coming back to work? A. No.

Q. Did you ever authorize or instruct Mr. Swartz, or anyone else, to talk to any of these men? A. I did not.”

At page 649:

“Q. (By Mr. Shapiro.) What did you tell Mr. Swartz, when he told you that he had talked to Mr. Quinn? A. *I told him he had no business going out there, that it was none of his business, that I was taking care of the situation between the employees and Lettie Lee.*” (Emphasis ours.)

Respondent's motion to strike all of the testimony concerning the alleged statements made by Swartz was denied. It is the position of respondent that none of said evidence was admissible, and that the same should have been stricken. Determinative of this point is the recent decision in the matter of *Humble Oil & Refining Co. v. N. L. R. B.*, 113 Fed. (2d) 85 (C. C. A. 5). The rule is stated as follows:

“As to mere foremen who were themselves eligible to membership in the employee organization, we adhere to what was said in *N. L. R. B. v. Whittier Milk Co.*, 111 Fed. (2d) 474 (6 L. R. R. M. 790): When not speaking in the exercise of their authority nor with the knowledge or approval of the employer, but in discussion of employee affairs on their own responsibility, they are within their personal rights of free speech.”

Swartz was eligible to membership in the Union, and in fact was invited to join. [R. 531.]

It should also be noted that Swartz had no authority to hire or fire. He testified as follows [at page 526]:

“Q. Do you have the power to hire any employees independent of anyone else in the factory? A. No.

I interview them and I might recommend to Mr. Bothman that he put them on.

Q. What is the situation with respect to discharging employees? Do you have that right? A. Well, I don't know. I have never tried that right.

Q. You have never fired anyone? A. I have never fired anyone, so I don't know if I have that right or not."

Bothman testified as follows [at page 650]:

"Q. All right. Now, has Mr. Swartz at any time had the authority to hire or fire employees? A. He has not.

* * * * *

Q. (By Mr. Shapiro.) To your knowledge, has Mr. Swartz ever discharged or fired an employee? A. Not that I know of.

Q. Has Mr. Swartz ever hired an employee, without first obtaining your permission? A. I don't think so. Not that I know of."

There is no evidence in the record of any authorization, express or implied, to Swartz to act on behalf of respondent or to speak for it or to discuss labor relations with any of the cutters. Consequently, any conversations or statements of Swartz were an exercise of his personal right of free speech, and were in no way binding upon respondent, and the objections to the introduction of such testimony should have been sustained and the testimony itself should have been stricken upon respondent's motion.

B. THE INCREASE IN WAGES GIVEN TO THE CUTTERS AT THEIR REQUEST WAS NOT AN UNFAIR LABOR PRACTICE.

Subdivision (c) of paragraph 9 charges respondent with having raised the wages of its cutters for the purpose of discouraging membership in the Union. This allegation is likewise without support in the record. The testimony of Bothman and of Swartz establishes without contradiction that the meeting of June 11, 1941, was called at the instance and request of the men cutters [R. 527, 528, 633]; that they asked for the raise, and that Bothman stated that he would either grant them an increase of fifteen cents an hour or pay them time and a half for overtime. [R. 529, 633.] They were told to think the matter over and let him know their decision. [R. 634.] Two days later, on June 13, Bothman was informed that the cutters had arrived at a decision and that they had decided to accept the increase. Later in the afternoon of that day, Bothman met with the men and told them that the increase would be fifteen cents an hour, retroactive to the first of that week. It should be borne in mind that at this time none of the cutters named in the complaint, with the exception of Baliber, were members of the Union. Union cards were not signed by the persons named in the complaint until the latter part of July, 1941, long after the wage increases were requested and given.

There is no testimony that in June, 1941, any disputes existed between the cutters and respondent, or that the subject of union affiliation was even being considered by the cutters. It is uncontradicted in the record that the subject of an increase in wages originated with the employees and was communicated to Bothman who enter-

tained the request and granted the increase. It certainly cannot be said under these circumstances that the increase was given for the purpose of discouraging membership in the Union. The court in this Circuit in the case of *N. L. R. B. v. Sterling Electric Motors*, 109 Fed. (2d) 194, has held that the granting of a wage increase to employees as a result of direct negotiation between the employees and the employer is not an unfair labor practice. At page 209, the court states as follows:

“If the inference of an attempt to violate the Act were permitted under the circumstances of this case, all employers would be *in terrorem* in granting any improvement in their employees’ conditions during the long period in which attempts, often by rival unions, were being made to organize them. We do not believe that Congress intended such a construction of an act to benefit the conditions of laboring men.”

This language is particularly appropriate in the instant case and completely disposes of the Board’s contention that the granting of a wage increase to certain of the employees as a result of their request therefor was an unfair labor practice.

C. THE OTHER ALLEGED UNFAIR PRACTICES.

Concerning the allegations of subparagraph (d) of paragraph 9, it appears that Bothman on several occasions requested certain of the employees to return to work. [R. 639, 641, 644, 646, 647.] He stated on the stand that he has been at all times and was then ready and willing to take back all of his former employees (with the exception of Sardo). That he is under no obligation to reinstate Sardo has already been fully discussed. Bothman testified that there was not sufficient work available

for all of his former employees because of conditions in the industry and lack of business. [R. 644.] The rule is well established that the Board may not order reinstatement if no work is available, or if it is being done by other regular employees. It has been so held in *Union Drawn Steel Co. v. N. L. R. B.*, 109 Fed. (2d) 587 (C. C. A. 3).

In paragraph 11, respondent is charged with having refused to reinstate the six employees named in the complaint for the reason that they had designated the Union as their representative. It is significant to note that subdivision (d) of paragraph 9 charges respondent with having solicited these same employees to return to their work. Paragraph 11 thus directly contradicts subdivision (d) of paragraph 9. It is submitted that the record does not support the allegations of paragraph 11, and that there is no showing that reinstatement was refused to any employee because of his Union activities. It would appear that the allegations of paragraph 11 and of subdivision (d) of paragraph 9 are so diametrically opposed and so inconsistent, one with the other, that the same should be completely eliminated from consideration. Certainly, the Board should be required to take a definite stand either one way or the other. Respondent either solicited the employees to return to work or it refused to reinstate them. Both situations could not exist at the same time.

Counsel for the Board make much ado over the circumstance that Mr. Sokol, attorney for the Union, wrote two or three letters to Mr. Bothman and attempted on several occasions to reach him by telephone, and that Bothman did not reply to his letters or answer his calls.

The point is of no significance. The letters referred to were written in the month of September, long after the commencement of the strike and at a time when Bothman knew that only twenty of respondent's employees out of a total of approximately one hundred twenty had responded to the strike call. He testified that he did not answer the letters for two reasons—first, that he did not believe that Sokol was the authorized representative of respondent's employees [R. 586], and second, that on September 11, 1941, he replied by letter to an inquiry from Mr. D. C. Sargent of the National Labor Relations Board, 21st Region, concerning respondent's position, and stated that respondent considered its entire shop as a unit appropriate for the purpose of collective bargaining and did not consider that the cutters alone constituted the proper unit. [Resp. Ex. 3A, R. 582.] Bothman furnished to Mr. Sargent at the same time all other information and data requested by Mr. Sargent, as will appear from the letter of September 11, 1941, together with the enclosures attached thereto, all of which are in evidence as exhibits on behalf of respondent. [Resp. Ex. 3A, 3B and 3C, R. 582, 583, 584, 585.] Bothman testified that he considered that he had done all that he was called upon to do when he advised Mr. Sargent of the National Labor Relations Board of the position of his company with respect to the appropriate bargaining unit. [R. 587.] Mr. Sargent was present in the hearing room while Bothman was testifying. He was not called to the stand by counsel for the Board, and as Bothman's testimony was not controverted it must, therefore, be conceded that his narrative of the events was true and correct. It is submitted that under these circumstances, the Board's finding that respondent wrongfully refused to bargain finds no support in the record.

As to the hearsay testimony that a telephone operator informed Sokol that Bothman would not answer his calls, the case of *N. L. R. B. v. Sterling Electric Motors*, 109 Fed. (2d) 194 (C. C. A. 9), completely disposes of this point raised by the Board in its brief. At page 209, the court states:

“We doubt whether in any event a failure to make an appointment in response to telephone calls of a labor organizer, or anyone else, where there is no sudden emergency, is a violation of the Act.

Thus, the matter of Mr. Sokol's letters and his alleged telephone calls may be eliminated from further consideration.

Another point is significant. Mr. Sokol testified on cross-examination by counsel for respondent that all of his communications were addressed to the attention of Mr. Bothman and all of his efforts to contact a representative of the company by telephone were likewise directed to Mr. Bothman. He admitted that he did not at any time attempt to make any effort whatsoever either by letter, telephone or otherwise to communicate with any other officer or representative of respondent. He admitted that he knew that respondent was a corporation and that it had other officers and representatives besides Mr. Bothman. [R. 262-3.] Having failed to communicate with Mr. Bothman, it would have been a simple matter for him to have at least made some effort to contact any one of the other officers of respondent corporation. By his own admission, he made absolutely no effort to do so.

IX.

The Right of Free Speech and Expression.

On the question of the right of the employer to express his opinions concerning unions and as to whether or not such expressions constitute unfair labor practices, we direct the court to the recent decision of the United States Supreme Court in *National Labor Relations Board v. Virginia Electric & Power Co.*, 314 U. S. 469, in which the Supreme Court held that employers' bulletins and speeches of its representatives warning employees that they would be discharged for "messing with the CIO" and other like statements were not unfair labor practices under the Act.

Other decisions to the same effect are *N. L. R. B. v. Lightner Publishing Co.*, 113 Fed. (2d) 621 (C. C. A. 7), in which the court states as follows:

"No expression of an employer's opinion as such on any subject can constitute an unfair labor practice; and obviously the N. L. R. B. has no authority to interfere with an employer's untrammelled expression of views on any subject."

In the case of *Humble Oil & Refining Co. v. N. L. R. B.*, previously cited, the rule is recognized that "the Constitutional right of free speech extends to industrial matters. *Thornhill v. Alabama*, 310 U. S. 68 (6 L. R. R. M. 697)."

In the matter of *Press Co., Inc., v. N. L. R. B.*, 118 Fed. (2d) 937 (Dist. of Columbia), to which case reference has been previously made, the rule is stated as follows:

"But giving due weight to the normal and natural effect of his statements (referring to the editor's

reference to the union as a 'God damn union' and to its members as 'rats') we are nevertheless of the opinion that, without more, the Board was not justified in finding that alone that constituted an unfair labor practice. The labor law does not prohibit the right of an opinion on the part of the employer nor the expression of it. (Citing cases.) Before oral statements of an employer may be held to be an unfair labor practice, it must appear that they interfered with, restrained or coerced employees in the rights guaranteed by the Act; that is to say, the right to join labor organizations, to bargain collectively, and to engage in concerted activities. But nothing that Lewis is quoted as having said, nor the surrounding circumstances, conveys the idea that the employees had anything to fear because of their union activities. . . . No witness suggests that there was at any time any use of or even the suggestion of the economic threat of discharge. . . ."

We find an exact parallel in the instant case. No witness testified or even suggested that there was at any time any use or suggestion of the economic threat of discharge. As previously pointed out, there is not one iota of evidence in the record that Bothman or anyone else ever stated to anyone that they would not be hired if they belonged to the Union, or that they would be discharged if they joined the Union.

In the case of *N. L. R. B. v. Ford Motor Co.*, 114 Fed. (2d) 905 (C. C. A. 6), the same rule is stated. It was there held that the order of the Board that the employer cease "circulating and distributing or otherwise disseminating among its employees statements or propaganda which disparages or criticizes labor organizations, or which

advises its employees not to join such organizations," was invalid and violated the right of free speech guaranteed to the employer by the First Amendment to the Federal Constitution. The court further held that the finding of the Board that the employer engaged in unfair labor practices by distributing said literature to its employees was not supported by substantial evidence.

It is respectfully submitted that the findings of the Board that respondent engaged in unfair labor practices are not supported by the evidence, and in so far as the same pertain to expressions of the employer's opinions, that the same are violative of the right of free speech guaranteed by the first amendment to the Federal Constitution.

X.

The Petition Does Not Allege That Respondent Is in Default or Has Failed to Comply With the Board's Order, and It Therefore Is Insufficient on Its Face and Should be Dismissed.

Unless the petition affirmatively shows that respondent is in default and has violated the Board's order, it fails to state sufficient facts to entitle petitioner to any relief and should be dismissed.

The petition on file contains no such allegations.

As stated in *N. L. R. B. v. La Salle Hat Co.*, 105 Fed. (2d) 709 (C. C. A. 3) at 710:

"But it is not alleged that respondents are disregarding the Board's order, or have failed to comply with its provisions."

The petition was dismissed.

In *N. L. R. B. v. Friedman-Harry Marks Clothing Co.*,
83 Fed. (2d) 731 (C. C. A. 2) at 733:

“It follows that the petitions were invalid for
several reasons:

* * * Second, they were insufficient on their
face because they did not allege that the respondent
was in default.”

It is respectfully submitted that the petition should be
dismissed.

Conclusion.

It is respectfully submitted that the Board's findings
are not supported by substantial evidence, that the Board's
order is invalid, and that the petition of the Board for
enforcement of said order should be denied and that an
order should be made directing that the complaint be dis-
missed in its entirety.

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By LEO SHAPIRO,

Attorneys for Respondent.

No. 10382

In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LETTIE LEE, INC., RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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FILED

AUG 25 1943

PAUL P. O'BRIEN,

CLERK

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In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10382

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LETTIE LEE, INC., RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

This reply brief is filed in answer to several contentions made in respondent's brief which were not anticipated or fully met in the Board's main brief.

1. Respondent contends (Resp.'s brief, pp. 9-10) that "a unit consisting of the cutters, slopers and trimmers cannot be the appropriate unit" because, it asserts, slopers and trimmers are not eligible to membership in the Union. But the Board specifically found (R. 72) upon ample evidence (R. 344-345, 394-405, 451, 466, 491-493), as had the trial examiner (B. A. 35), and as *respondent had contended* before the Board (Brief to Board, pp. 2-4; Exceptions to examiner's intermediate report (R. 50, par. 5a)), that the three female employees of respondent who are styled slopers and trimmers "have been doing the same kind of work" as respondent's employees who

are styled cutters, and that they are in fact "qualified cutters."¹ As such, they are of course eligible to membership in the Union (R. 212-213, 230-231). Moreover, in view of respondent's position before the Board, it may not now be heard to oppose the Board's findings in this regard. Section 10 (e) of the Act; *Marshall Field & Co. v. N. L. R. B.*, 63 S. Ct. 585.

2. Respondent also contends (Resp.'s brief, pp. 11-12, 18-21) that the Board's finding as to the appropriate unit in the instant case is inconsistent with several cited prior Board decisions. But the statute clearly requires that the Board determine the appropriate unit in light of the circumstances "in each case" (Section 9 (b); see also H. Rep. 1147, 74th Cong., 1st Sess., p. 22, wherein it is stated that designation of the appropriate unit is "obviously one for determination in each individual case"). Here, the record shows that cutters constitute a well-recognized craft in the garment industry and are organized and engage in collective bargaining through separate locals;² that they are the only clearly defined group of

¹ The Union, which had argued to the contrary before the examiner, filed no exceptions to his finding (R. 72).

² While it appears that where all of the employees of a garment manufacturer in the Los Angeles area are organized, bargaining in their behalf is customarily carried on by a Joint Board of the Union composed of representatives of cutters, operators, pressers, and cloak operator locals, where only the cutters are organized the record shows that representatives of the cutters engage in collective bargaining independently and without regard to the Joint Board arrangement (R. 201-203, 208-210). Moreover, the cutter's local entered into the Joint Board arrangement only upon condition that it be permitted to retain its autonomy, elect its own bargaining representatives, and attend to its own bargaining (R. 222-223).

respondent's employees who have sought to exercise bargaining rights; that the Union is not seeking to represent any other employees than cutters; and that no other production employees of respondent apparently desire representation by the Union (Board's main brief, pp. 9-10). Considerations such as these have been repeatedly held to constitute proper bases for a unit determination (*id.*). In these circumstances it may not be said that the Board's unit determination is arbitrary or capricious.³

3. Respondent contends further (Resp.'s brief, p. 13) that, despite the facts set forth in the Board's main brief with respect to respondent's refusal to bargain (Board's main brief, pp. 5-7), the Board nevertheless erred in concluding that respondent had violated Section 8 (5) of the Act. Respondent's contention in this regard rests upon the basis that the unit which the Board found in its decision to be the appropriate unit was not identical in all respects with the unit which the Union claimed to be appropriate, in that the appropriate unit as found by the Board included respondent's employees designated as slopers and trimmers. But the evidence reviewed in the Board's main brief (pp. 5-7) demonstrates beyond

³ The Board has also recently held cutters to constitute a separate appropriate unit in other cases. E. g., *Matter of Crescent Dress Co.*, 29 N. L. R. B. 351; *Matter of Ulman, Inc.*, 45 N. L. R. B. 836. In giving weight to the extent of organization among the employees in making its unit finding, the Board applied a factor which it has stressed since 1937 as an important consideration in effectuating the policies of the Act. *Matter of R. C. A. Communications, Inc.*, 2 N. L. R. B. 1109, 1115; *Matter of Gulf Oil Corp.*, 4 N. L. R. B. 133, 137. See also *Matter of Swift & Co.*, 42 N. L. R. B. 1184; *Matter of Pacific Gas & Electric Co.*, 44 N. L. R. B. 665.

cavil that in refusing to bargain with the Union respondent was not motivated by any doubt as to the appropriate unit, but by a flat rejection of the collective bargaining principle. As the Board pointed out (R. 76, note 15), respondent's conduct "precluded any discussion of the unit" and in effect constituted a refusal "to bargain with the Union for employees in any unit." It is clear that the Union did in fact represent a majority of the employees in the appropriate unit found by the Board (Board's main brief, p. 11). In these circumstances, as is well settled, respondent may not excuse its flagrant refusal to bargain collectively by recourse to spurious doubts, which did not exist, as to the appropriate unit. See e. g. the *Biles Coleman* and the *National Motor Bearing* cases, cited at p. 14 of our main brief; see also *N. L. R. B. v. Clinton E. Hobbs Co.*, 132 F. (2d) 249, 251 (C. C. A. 1); *N. L. R. B. v. Federbush Co.*, 121 F. (2d) 954, 956 (C. C. A. 2). Cf. *N. L. R. B. v. Remington Rand, Inc.*, 94 F. (2d) 862, 868-869 (C. C. A. 2).

4. Respondent further contends (Resp.'s brief, pp. 23-26) that the Board improperly ordered it to reinstate employee Joe Sardo, who had been previously convicted of a felony. This contention is manifestly untenable in the circumstances of this case. Assuming, *arguendo*, that respondent would have been justified in refusing to reinstate Sardo for this reason, it is clear from the evidence reviewed in the Board's main brief (pp. 16-17), as the Board found (R. 80), that Sardo's criminal record did not in fact motivate respondent's refusal to reinstate the employee, but that respondent's refusal was in fact based upon his union activities.

Nor does it appear that respondent has any rule against the employment of persons with criminal records (Cf. *Eagle Picher Mining and Smelting Co. v. N. L. R. B.*, 119 F. (2d) 903, 915 (C. C. A. 8). No valid reason appears why Sardo's offense, resurrected from a buried past,⁴ should suspend the application of the normal remedy of reinstatement to correct respondent's illegal conduct against him. "Rehabilitation of past offenders finds sanction both in law and in common practice." *N. L. R. B. v. Gamble Robinson Co.*, 129 F. (2d) 588, 592 (C. C. A. 8). See also *N. L. R. B. v. Oregon Worsted Co.*, 96 F. (2d) 193, 195 (C. C. A. 9); *N. L. R. B. v. J. G. Boswell Co.*, 12 L. R. R. 655, 660 (C. C. A. 9).

5. Respondent also laboriously seeks to disprove in its brief (pp. 34-35) a Board "contention" that respondent's "granting of a wage increase * * * was an unfair labor practice." But the Board made no such finding. Nor is there any such contention in the Board's main brief. On the contrary, it is clear from a reading of the Board's decision and its brief that the increase in wages is merely referred to as a part of the totality of respondent's conduct (R. 61-63; Board's main brief, pp. 4, 5, 13 (note)).

6. Respondent asserts (Resp.'s brief 39-41) that its oral statements, found by the Board to be unfair labor practices, constituted merely expressions of "opinion," and that the Board's findings of unfair labor practices, insofar as based upon such statements, violate respondent's "right of free speech." But the unambiguous

⁴ Sardo's conviction occurred in 1936 (R. 630).

statements of hostility to the Union, made by respondent's supervisory personnel to men "who know the consequences of incurring the employer's strong displeasure" (*International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, 78); respondent's threats to close its plant in the event of unionization; its emphasis upon alleged disadvantages which membership in the Union would entail; and its questioning of prospective employees concerning union affiliation (See Board's main brief, pp. 4, 5, 7, 8, 9, note 8, p. 13), may not conceivably be regarded as merely expressions of opinion. Moreover, "Even expressions of opinion of such a nature as to intimidate and coerce employees * * * violate the Act." *N. L. R. B. v. Schaefer-Hitchcock Co.*, 131 F. (2d) 1004, 1007-1008 (C. C. A. 9). (See also cases cited, note 8, p. 13, of Board's main brief).

7. Finally, respondent contends that the Board's petition to enforce its order should be denied because the petition fails to allege that respondent has not complied with the order (Resp.'s brief, pp. 41-42). But it is firmly established that such an allegation is not a condition precedent to an enforcement decree. *N. L. R. B. v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271; *N. L. R. B. v. Gerling Furniture Company, Inc.*, 103 F. (2d) 663 (C. C. A. 7); *N. L. R. B. v. Oregon Worsted Co.*, 96 F. (2d) 193, 194 (C. C. A. 9); *N. L. R. B. v. American Potash & Chemical Corp.*, 98 F. (2d) 488, 493 (C. C. A. 9); *N. L. R. B. v. L. H. Hamel Leather Co.*, 135 F. (2d) 71, 72-73 (C. C. A. 1); *N. L. R. B. v. Burke Machine Tool Co.*, 133 F. (2d) 618, 621 (C. C. A. 6); *N. L. R. B. v. Clinton E. Hobbs*

Co., 132 F. (2d) 249, 251-252 (C. C. A. 1). Indeed, *N. L. R. B. v. Friedman-Harry Marks Clothing Co.*, 83 F. (2d) 731 (C. C. A. 2), upon which respondent relies, was subsequently reversed by the Supreme Court (301 U. S. 58). Accordingly, that case, too, is authority against respondent's contention. Nor does *N. L. R. B. v. LaSalle Hat Co.*, 105 F. (2d) 709 (C. C. A. 3) help respondent; the Board's order in that case was denied enforcement on wholly unrelated grounds, as the opinion in that case plainly discloses.

CONCLUSION

It is respectfully submitted that the Board's order is valid and proper in all respects, and that a decree should issue affirming and enforcing said order in full as prayed in the Board's petition to enforce.

ROBERT B. WATTS,

General Counsel,

HOWARD LICHTENSTEIN,

Assistant General Counsel,

DAVID FINDLING,

ELEANOR SCHWARTZBACH,

Attorneys,

National Labor Relations Board.

AUGUST 1943.

APPENDIX

The relevant portions of the National Labor Relations Act are as follows:

SEC. 9 * * *

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

SEC. 10 * * *

(e) * * * No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. * * *

No. 10394

United States
Circuit Court of Appeals

For the Ninth Circuit.

ADOLPH SUNDBERG,

Appellant,

vs.

WASHINGTON FISH & OYSTER COMPANY,
a corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division

FILED

APR 19 1943

PAUL P. O'BRIEN,
CLERK

No. 10394

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NAMES AND ADDRESS OF COUNSEL.

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404 Joseph Vance Bldg.,
Seattle, Washington

MR. ARTHUR I. MOULTON,

Attorney for Appellant,

Failing Building
Portland, Oregon.

MR. HAROLD A. SEERING,

Attorney for Appellee

802 Northern Life Tower
Seattle, Washington

MR. J. GORDON GOSE,

Attorney for Appellee

657 Colman Bldg.,
Seattle, Washington. [1*]

In the District Court of the United States for the
District of Washington, Northern Division

No. Civil 449

ADOLPH SUNDBERG,

Plaintiff,

v.

WASHINGTON FISH & OYSTER COMPANY,
a corporation,

Defendant.

COMPLAINT

For cause of action, plaintiff complains and alleges:

I.

Plaintiff is a citizen of the State of Oregon, and defendant is a corporation incorporated under the laws of the State of Washington, and the matter in controversy exceeds, exclusive of interest and costs, the sum of \$3000.00.

II.

During all of the times herein mentioned the defendant was the owner of the diesel motorship "Commonwealth", and at the time herein complained of was using it in the transportation of certain commodities in interstate commerce between the State of Washington and the Territory of Alaska.

III.

During the month of May, 1940, plaintiff was em-

ployed by defendant as a member of the crew of the aforesaid vessel to assist in operating the same from Seattle, Washington, to Port Williams, Alaska, and defendant agreed to furnish to plaintiff transportation and meals during said voyage, and to furnish to plaintiff upon the arrival of said vessel at its destination with employment in the operation of certain fishing boats owned by defendant upon navigable water, and defendant undertook to pay plaintiff for his services as such fisherman upon the basis of the quantity of fish caught. Plaintiff cannot particularly specify what his earnings for said voyage would have been, but is informed and believes and alleges that the same would have been during the 1940 fishing season a sum in excess of \$1000.00, and plaintiff's employment during [2] said season was of a value to him equal to a wage of \$200.00 per month as a shore worker.

IV.

On May 21, 1940, said vessel was engaged upon said voyage and was being navigated in the territorial waters of Alaska at a point which plaintiff cannot particularly specify but which was near Anchorage, Alaska; and thereupon, by reason of the negligence of defendant, its officers, agents and employes in the particulars hereinafter specified, plaintiff sustained a gunshot wound through his left hand while upon the deck of said vessel, and was caused to suffer great physical pain and mental anguish and to be crippled and lamed in his said left hand, and the usefulness thereof was destroyed.

V.

In the operation of its said vessel and the maintenance thereof defendant was careless and negligent in that although the master of said vessel, Seth Christensen, well knew that said vessel was occupied by a number of employes and that the same vessel was a small vessel and the deck thereof crowded, said master carelessly and negligently permitted and allowed persons on said vessel to be in possession of high powered rifles and to fire the same from and across the deck of said vessel, to the great and extreme hazard of the members of the crew of said vessel, including plaintiff, and carelessly and negligently failed, after notice that said rifles were in possession of persons on said vessel and were frequently being fired therefrom, to restrain or prevent possession and firing of said rifles, and by reason of the presence of said rifles and the failure of the master of said vessel to prevent the same being promiscuously fired about and upon the deck of said vessel, said vessel was rendered and was unseaworthy, and the decks thereof were rendered extremely unsafe and dangerous for occupancy by members of the crew of said vessel, and in the particulars aforesaid defendant failed to keep and maintain the deck of said vessel reasonably safe for the use and occupancy of the members of the crew of said vessel.

Defendant was further careless and negligent in that a member of the crew of said vessel, one Lew Varner, at the time aforesaid carelessly and negligently fired a high powered rifle from a point on the deck of said vessel [3] behind plaintiff, past plaintiff's head and body, and in such close proximity

to plaintiff that the ball thereof struck plaintiff's said left hand, inflicting the injuries herein complained of.

The negligence of defendant and its aforesaid master, and the aforesaid member of the crew of said vessel, said Lew Varner, was the direct and proximate cause of the injuries and damage suffered by plaintiff as aforesaid.

VI.

Prior to these injuries plaintiff was a strong, able-bodied man, capable of earning \$200.00 per month at shore wages, and actually engaged in employment upon said vessel on the aforesaid fishing voyage. By these injuries he has been made incapable of the use of his left hand and has been permanently incapacitated for the performance of the labor incident to his usual employment, and has incurred expenses in the amount of \$284.85 for hospitalization at Anchorage, Alaska, and in other amounts which he cannot particularly specify but which he alleges will aggregate the further sum of \$250.00.

VII.

Plaintiff elects to maintain this action under the provisions of Section 33 of the Act of June 5, 1922, C. 250, 41 Stat. 1007.

For a Second and Alternative cause of action, plaintiff alleges that by reason of the injuries mentioned and set forth in his first cause of action herein, plaintiff became and was disabled and injured while in the employ of defendant under the circum-

stances set forth in said first cause of action, and required and was entitled to wages at the end of the voyage of said vessel, and to maintenance during the disability created by said wound and to cure, according to the rules in admiralty. The voyage of said vessel included a trip from Seattle, Washington, to Port Williams, Alaska, employment there during the 1940 salmon fishing season, and return to Seattle, and plaintiff's wages for said voyage would, as plaintiff is informed and believes, have amounted to the sum of \$1000.00. Defendant failed to furnish plaintiff care and cure by reason of his disability, and plaintiff has incurred a hospital bill at Anchorage, Alaska, in the sum of \$284.85. Plaintiff was under treatment and care for his said [4] injuries for the period of three months next following the same, and his maintenance during said period was of the reasonable value of \$2.00 per day, or \$60.00 per month, being the aggregate sum of \$180.00.

Wherefore, plaintiff prays for judgment against said defendant for the sum of \$20,000.00 on his first cause of action herein, or, if it be adjudged that defendant is not liable in damages for said injuries, that in the alternative he may have and recover of and from defendant his wages to the end of said voyage in the sum of \$1000.00, or such sum as may be adjudged therefor, his hospitalization expense

in said sum of \$284.85, maintenance in the sum of \$180.00, and his costs and disbursements herein.

ARTHUR I. MOULTON

Attorney for Plaintiff

Address: 712 Failing Building, Portland, Oregon.

On trial of the foregoing civil action, plaintiff will demand trial of the issues thereof by jury.

ARTHUR I. MOULTON

Attorney for Plaintiff

[Endorsed]: Filed Dec. 10, 1941. [5]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant Washington Fish & Oyster Company, a corporation, and, for its answer and defenses to plaintiff's complaint, admits, denies and alleges as follows:

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

I

Defendant admits the allegations of Paragraphs I and II of said complaint.

II

Answering Paragraph III of said complaint, defendant admits that, at approximately the time al-

leged, plaintiff was being transported to Port Williams, Alaska, as an employee whose employment was to begin upon arrival at said destination, and not as a seaman. Defendant admits that, upon arrival at Port Williams, plaintiff was to be employed in fishing operations, his remuneration to be determined upon the basis of the quantity of fish caught; otherwise, defendant denies each and every remaining allegation in said paragraph contained.

III

Answering Paragraph IV, defendant admits that, at approximately [6] the time and place therein alleged, the plaintiff sustained an injury to his left hand as a result of a gunshot wound; otherwise, defendant denies each and every remaining allegation in said paragraph contained, and particularly denies that said occurrence was the result of any negligence on the part of defendant, its officers, agents or employees.

IV

Defendant denies the allegations of Paragraph V.

V

The defendant has no information sufficient to form a belief as to the allegations of Paragraph VI and therefore denies the same, and particularly denies that plaintiff has been damaged in any sums as alleged, or at all, by reason of any negligence or liability of any nature on the part of defendant.

For answer to the second and alternative cause of action, defendant denies each and every allega-

tion in said paragraph contained, and particularly denies that plaintiff sustained any damages as alleged in said paragraph, or at all, by reason of any liability on the part of defendant.

Third Defense

As an affirmative defense to plaintiff's complaint, defendant alleges that any injuries sustained by plaintiff were proximately caused or materially contributed to by plaintiff's own negligence.

Fourth Defense

As a second affirmative defense to plaintiff's complaint, defendant alleges that plaintiff, having full knowledge of the situation in regard to the use of firearms on the boat "Commonwealth," elected to participate in the use of said firearms, and to assist therewith, and the risks incident there to were [7] voluntarily assumed and incurred by plaintiff.

Wherefore, defendant prays that plaintiff's action be dismissed; that plaintiff take nothing thereby, and that defendant have judgment for its costs and disbursements herein to be taxed.

HAROLD A. SEERING

Attorney for Defendant

[Endorsed]: Filed Sept. 22, 1942. [8]

In the District Court of the United States for the
Western District of Washington, Northern Division

No. Civil 449

ADOLPH SUNDBERG,

Plaintiff,

vs.

WASHINGTON FISH & OYSTER COMPANY,
a corporation,

Defendant.

JUDGMENT

The above-entitled cause having come on regularly for trial before the above-entitled court on December 8, 1942, the plaintiff appearing personally and by Arthur I. Moulton and Edgar E. Neal, his attorneys, and defendant appearing by Harold A. Seering and J. Gordon Gose, its attorneys, and a jury having been empaneled and sworn to try said cause, the trial of said action proceeded with the introduction of evidence upon behalf of plaintiff, and at the conclusion of such evidence, the plaintiff having rested and defendant having thereupon moved for a directed verdict in its favor, and for dismissal of said cause, and the Court having heard argument of counsel for both plaintiff and defendant upon said motions, and having announced in open court that the same should be granted, and having thereupon dismissed the jury;

Now, Therefore, It Is Hereby Ordered and Adjudged that plaintiff's complaint and both causes

of action therein alleged be dismissed with prejudice and with costs to be taxed by the Clerk in favor of defendant and against the plaintiff in the sum of \$.....

Done in open court this 21st day of December, 1942.

JOHN C. BOWEN
District Judge.

Presented by:

J. GORDON GOSE

O. K. as to form.

ARTHUR I. MOULTON

Of Counsel.

[Endorsed]: Filed Dec. 21, 1942. [9]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the above named defendant, Washington Fish & Oyster Company, a corporation, and to its attorneys of record, Harold A. Seering and J. Gordon Gose:

You and each of you will take notice that the above named plaintiff does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment made and entered in the above entitled court and cause on December 21, 1942, wherein and whereby it is ordered and adjudged that plaintiff's complaint and both causes of action therein alleged be dismissed with

prejudice and with costs to be taxed by the clerk in favor of defendant and against plaintiff in the sum of \$80.90, and that plaintiff appeals to said Circuit Court of Appeals from the whole and every part of said judgment.

Dated, March 2, 1943.

ARTHUR I. MOULTON

EDGAR E. NEAL

Attorneys for Plaintiff

[Endorsed]: Filed Mar. 5, 1943. [10]

[Title of District Court and Cause.]

UNDERTAKING FOR PAYMENT OF
COSTS ON APPEAL.

Whereas, Adolph Sundberg, plaintiff in the above entitled court and cause, appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment heretofore, to wit, on the 21st day of December, 1942, rendered and entered in the above entitled Court and cause and in favor of defendant and against plaintiff,

Now Therefore, in consideration of the premises and of such appeal, we, Adolph Sundberg, as Principal, and General Casualty Company of America, a corporation, organized and existing under the laws of the State of Washington, do hereby jointly and severally undertake and promise on the part of the said plaintiff and appellant, the said Adolph Sund-

berg, that said appellant will pay all costs that may be awarded against him in the said appellate court if the appeal is dismissed or the judgment affirmed, and will also pay such costs as the appellate court may award if the judgment is modified.

In Witness Whereof, the said Principal has caused these presents to be signed and executed, and the said Surety has caused these presents to be duly executed by its authorized officers, and its corporate seal to be hereunto affixed this 4 day of January, A. D. 1943.

ADOLPH SUNDBERG

Principal

[Seal]

GENERAL CASUALTY COM-
PANY OF AMERICA

By E. J. DeVOE

Attorney-in-Fact

Approved as to form and as to surety.

HAROLD A. SEERING

Attorney for Defendants.

Bond approved 3/5/43.

JOHN C. BOWEN

U. S. District Judge

[Endorsed]: Filed Mar. 5, 1943. [11]

[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED
ON BY APPELLANT UPON APPEAL.

To the above named defendant, and to its attorneys
of record herein:

You will take notice that plaintiff will rely upon
the appeal herein to the United States Circuit Court
of Appeals for the Ninth Circuit on the following
points:

1. The above entitled court erred on the trial
of said cause in finding and holding that the evi-
dence submitted by plaintiff in said cause, as the
same appears from the transcript of the evidence
and proceedings on file herein, is not sufficient to
entitle plaintiff to have his cause submitted to a
jury for its verdict;

2. Said court erred in ordering and adjudging
that plaintiff's complaint be dismissed, with preju-
dice and with costs;

3. Said court erred in not overruling and deny-
ing defendant's motion in said cause for the dis-
missal thereof, and in not submitting said cause
to the jury.

Dated, March 3, 1942.

EDGAR E. NEAL

ARTHUR I. MOULTON

Attorneys for Plaintiff

Service by copy of the foregoing Statement of Facts to be Relied on by Appellant upon Appeal is hereby admitted this 5th day of March, 1943.

HAROLD A. SEERING

Of Attorneys for Defendant.

[Endorsed]: Filed Mar. 6, 1943. [12]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL.

Plaintiff, having appealed from the judgment in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit and having given bond on appeal, designates the following portions of the record, proceedings and evidence to be contained in the record on appeal and requests the Clerk of the above entitled Court to prepare the record therein in conformity with this designation, towit:

- (a) Plaintiff's complaint;
- (b) Defendant's answer;
- (c) Judgment in said cause, dated December 21, 1942;

(d) Transcript of all the evidence taken and proceedings had in said cause as the same is prepared from the stenographic notes made on the trial of said cause by Ernest E. Getchell, court reporter, and on file herein;

- (e) Notice of appeal;

(f) Undertaking for payment of costs on appeal;

(g) Plaintiff's designation of contents of record on appeal;

(h) Plaintiff's statement of points to be relied on upon appeal.

Dated, March 1943.

ARTHUR I. MOULTON

EDGAR E. NEAL

Attorneys for Plaintiff

Service by copy of the foregoing Designation of Contents of Record on Appeal is hereby admitted this 5th day of March, 1943.

HAROLD A. SEERING

of Attorneys for Defendant.

[Endorsed]: Filed Mar. 6, 1943. [13]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Judson W. Shorett, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing typewritten transcript of record, consisting of pages numbered from 1 to 30 inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above and foregoing en-

titled cause as is required by Designation of Counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, except as to the reporter's transcript of proceedings, filed March 5, 1943, the original of which is enclosed herewith as part of the record on appeal in this cause, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for making record, certificate or return to the United States Circuit Court of appeals for the Ninth Circuit, to-wit:

Clerk's fees (Act Feb. 11, 1925) for making	
record, certificate of return, 30 folios at 05c	1.50
Appeal fee (Sec. 5 of Act)	5.00
Certificate of Clerk to Transcript of Record	.50

Total	\$7.00
	[14]

I further certify that the foregoing fees have been paid by attorneys for appellant.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 19 day of March, 1943.

[Seal]

JUDSON W. SHORETT,

Clerk

By TRUMAN EGGER,

Chief Deputy. [15]

[Title of District Court and Cause.]

TESTIMONY

Be It Remembered that heretofore, on to-wit, the 8th day of December, A. D., 1942, the same being one of the judicial days of the November, A. D., 1942 term of said court, this cause came on for trial before the Honorable John C. Bowen, one of the judges of said court, and a jury; whereupon, the following testimony was taken and proceedings had in due form of law.

Appearances:

MOULTON & DAVIS, by
A. I. MOULTON, Esq.,

712 Failing Building, Portland, Oregon,
attorneys for the plaintiff.

HAROLD A. SEERING and
JOE GOSE,

Seattle, Washington, attorneys for the
defendant. [2*]

PROCEEDINGS

The Court: In the case of Adolph Sundberg versus Washington Fish & Oyster Co., are the parties ready to proceed?

Mr. Moulton: The plaintiff is ready, may it please the Court.

* Page numbering appearing at foot of page of original Reporter's Transcript.

Mr. Seering: The defendants are ready, your Honor.

The Court: Very well, you may proceed.

(Whereupon, a jury was duly impaneled and sworn.)

The Court: The plaintiff may now make his opening statement of what he expects the evidence will be in this case, and the Court advises the jury that this statement is not evidence; it is merely an advance statement made by counsel for the purpose of advising the jury what to expect in the way of proof, and it is merely made for the guidance of the jury, but not as evidence.

(Mr. Moulton opened the case in behalf of the plaintiff.)

(Whereupon, the plaintiff, to maintain the issues on its behalf, introduced the following evidence.)

MR. ADOLPH SUNDBERG,

the plaintiff herein, was called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Moulton:

Q. You are the plaintiff, Adolph Sundberg, are you? A. Yes, sir.

Q. And where do you reside, Mr. Sundberg? [3]

A. I am residing in Portland, now; but my home address is Mayger, Oregon.

(Testimony of Adolph Sundberg.)

Q. You were born at Mayger, Oregon?

A. Yes, sir.

Q. How old are you? A. Thirty-three.

Q. What has been your occupation during your lifetime?

A. Oh, I worked in the railroad for about twelve years and fished the rest of the time.

Q. You fished on the Columbia River, did you?

A. Yes, sir.

Q. And have you fished in Alaska?

A. One season is all.

Q. What season was that?

A. The season of 1939.

Q. And for whom were you employed during the season of 1939?

A. Washington Fish & Oyster Co.

Q. You also were employed at the beginning of a fishing excursion for the same company in 1940, were you? A. Yes, sir.

Q. Was there any difference in the terms of your employment in 1939 and 1940?

A. No, sir.

Q. Will you please state to the jury what the 1939 arrangement was as to the nature of the work—what you had to do and what compensation you were to receive?

A. Well, we fished on a share, and fished for a man by the name of Swords; that is, there were three of us in the boat, and we received a share each, and the company takes [4] one share for the use of the gear.

(Testimony of Adolph Sundberg.)

Q. And where did you arrange the terms of that employment? A. Right here in Seattle.

Q. What was it to include? Explain what the whole transaction was to include and what the arrangement was and the nature of the whole trip.

A. I just don't understand what you mean.

Q. How were you to get to Alaska, in the first place?

A. I went up on the cannery tender.

Q. What was the arrangement by which you were to go up on the cannery tender?

A. Well, I stand a watch at the wheel, was all.

The Court: Who said what? Who made the arrangements, and whose wheel were you standing by or wheeling? You see, the jury and the Court never heard of this case before.

The Witness: Well, I talked to Mr. Jensen.

The Court: Who is he?

The Witness: He is one of the operators of the Washington Fish & Oyster Co.

The Court: All right.

By Mr. Moulton:

Q. He was the man with whom you made your hiring arrangement? A. Yes, sir.

Q. What did he tell you and what were you expected to do and what did you tell him about the matter?

A. I just asked him if I could go up on this tender, and he said it would be all right.

(Testimony of Adolph Sundberg.)

Q. And on that trip you stood watch? [5]

A. I did.

Q. What watch did you stand on that trip? Was it on the wheel watch? A. The wheel watch.

The Court: What do you mean by the wheel watch?

The Witness: Well, that is to navigate the ship.

The Court: You were steering the ship?

The Witness: That is right.

By Mr. Moulton:

Q. And when you got to Alaska, what service were you to perform?

A. We worked at the cannery first for a few days.

Q. For how long?

A. I think I worked there eight days that year.

Q. What were you being paid for that?

A. They paid us \$5 a day and board.

Q. \$5 a day and furnished your board?

A. That is right.

Q. Who furnished the board during the fishing season?

A. The Washington Fish & Oyster Co. did not furnish the board while we were fishing.

Q. They did not?

A. No. That came out of our earnings.

Q. Who furnished the board on ship?

A. They furnished the board,—the Washington Fish & Oyster Co.

Q. So then you stood this wheel watch. How many hours a day did you do that?

A. That was four hours a day.

(Testimony of Adolph Sundberg.)

Q. And then you worked about eight days, you say? [6]

A. Eight days at the cannery, yes.

Q. And you fished for about how long?

A. From the first of June to the 15th of August.

Q. And the next year with whom did you make the arrangements to make another one of these trips?

A. That was Mark Jensen, also.

Q. The same man? A. Yes.

Q. What did he say and what did you say to him about this trip in 1940?

A. I just asked him if I could go up again this year, and he said it would be all right.

Q. Did you discuss what you were to do?

A. Well, to fish.

Q. Were there any instructions given to you more than had been done in 1939? A. No.

Q. Nothing else. You reported to the boat, did you? A. I beg your pardon.

Q. Did you report to the boat? A. Yes.

Q. What was the name of the boat?

A. The "Commonwealth."

Q. How large a boat was it?

A. It is about 110 feet long.

Q. What arrangements did you make with anyone on the boat as to what watch you were to stand?

A. I asked the engineer if I could stand the engine watch, rather than the wheel watch.

Q. What did he say about that? [7]

A. He said it would be all right.

(Testimony of Adolph Sundberg.)

Q. And how many hours does the engine watch require? A. That would be six hours.

Q. That was three hours at a time?

A. Three at a time?

Q. Yes, three at a time? A. Yes.

Q. Can you give us about the size of this boat?

The Court: He said it was 110 feet long.

By Mr. Moulton:

Q. About what was it across the beam?

A. Well, I couldn't say, because it is quite wide.

Q. That is very indefinite. Can you give us about how many feet?

A. Well, I would say about twenty-eight feet.

Q. And what was the load as she left Seattle?

A. We had several skiffs on deck, and there were about five, I think——

Q. I wish you would be a little more specific, Mr. Sundberg, and tell us about what the deck load of the boat consisted of and how much room was left free on the deck.

A. Well, we had a large tank on there for the—they were putting on a cold storage plant this year, and several box boards—fishing boxes that were not made up; they were just the boards, and I think there were five skiffs on deck.

Q. And to what extent did they occupy the space?

A. That left very little room on the deck.

Q. Was there free room on the deck? [8]

A. We could get down one side, but not on the other.

(Testimony of Adolph Sundberg.)

Q. How much room was left amidships?

A. Between the rail?

Q. Yes, between the two rails, across the ship.

A. There wasn't any room except just a little passage-way on the side.

Q. Where was the wheelhouse? Where did the men steering the ship stand?

A. Well, just—well, not quite amidship; more towards the stern.

Q. And now, then, will you tell the jury what occurred after you left Seattle and up to the time you were hurt, in respect to the use of firearms on the boat?

A. Well, there was a lot of shooting on there; but there wasn't any shooting done from the time we left Seattle until—well, we was in Canadian waters the next day, and there was one or two shots fired, but the Captain,—Captain Christensen said, "You had better not fire while we are in Canadian waters, or we might get into trouble."

Q. You heard that, did you? A. Yes, sir.

Q. I was mistaken in my opening statement, was I, in stating that there had been several days,—

A. (Interposing) Yes, sir.

Q. And they had guns, so far as you knew, on the ship?

A. Well, Irving Taylor had a rifle, and Lewis Varner.

Q. Do you know what kind of guns they were?

A. Irving's was a 301, I think and Lewis' was a 250-3,000 Savage.

(Testimony of Adolph Sundberg.)

Q. Do you know much about guns yourself? [9]

A. No, not very much, no.

Q. Have you ever owned a gun in your life?

A. I never have, no.

Q. What would you say you observed about them, as to whether they were guns of high power?

A. Yes, they were; I know that much about them.

Q. When did you first say there were guns on the deck of the ship?

A. The first day after we left Seattle.

Q. Do you know about what time of day?

A. No, I wouldn't say.

Q. Tell the jury what you observed about it and where the captain was when you observed it and what took place when you first saw the guns on the ship?

A. Well, Lewis had his gun up there, and he just—I think it was two times; I am sure it was not over that, and the captain was up on the wheel-house, and the captain said, "You had better put the guns away while we are in Canadian waters, or we might get into trouble."

Q. And what was done in reference to that instruction?

A. They did not do any more shooting.

Q. How long were you in Canadian waters?

A. We were in Canadian waters three days—possibly four.

Q. And when did you next see the guns on the deck of the ship?

(Testimony of Adolph Sundberg.)

A. That is after we left Ketchikan.

Q. Do you know whether that was out of Canadian waters? A. Yes, it is.

Q. How long before you were hurt did you first see these guns after you left Ketchikan? [10]

A. I don't remember exactly how many days it took us to get to Ketchikan.

Q. Well, just as nearly as you can recollect. How many days transpired from the time that the guns first were brought out on the deck again after they had been ordered in until you were hurt? That is, was it one day or two days or three days, or just how many days?

A. I still do not understand what you mean—the first time I saw the guns or——

Q. I will try to approach it in another way. After you left Ketchikan—how soon after you left Ketchikan did you see the guns on the deck again?

A. Very soon after we left; just possibly an hour or two.

Q. How many of the guns came on deck then?

A. Two.

Q. What was done with them?

A. Oh, just shooting.

Q. From what point on the deck were they fired?

A. Mostly from the rail.

Q. Were they at anytime fired otherwise than from the rail?

A. No, not very much, no. I do not recall seeing anybody shooting clear across the deck; but

(Testimony of Adolph Sundberg.)

they would stand inside the deck, possibly four to six feet, and shoot over the rail.

Q. And while this shooting was going on, where was the captain of the ship?

A. Well, at times he was asleep, and at times in the wheelhouse, and at times on the deck.

Q. Do you know whether, when any of this shooting was going [11] on, the captain was in position to see? A. Yes.

Q. What do you know about that?

A. Well, he knew that; he seen it several times.

Q. How continuously, or how much shooting was done from then on?

A. There was quite a bit of shooting at times.

Q. Could you give us an estimate of how many times, or how many shots would be fired in a day from that ship?

A. I would not attempt to make an estimate like that, because I wouldn't say.

Q. What kind of information can you give us upon that subject?

A. I could say there were several shots fired a day.

Q. How many days from the time these guns came out first, after you left Ketchikan, was it that you got hurt?

A. Well, it was about four days.

Q. Was there any day during those four days when there was not shooting from the ship?

A. I could not remember, but I do not think

(Testimony of Adolph Sundberg.)

there was any day that there was not at least a few shots fired.

Q. Did you hear any orders given by the captain to not fire guns?

A. No, sir; not until after I was injured.

Q. Now, then, tell the jury in your own way the circumstances which occurred at the time you were injured?

A. I was in the wheelhouse then, and Walter Mustola was at the wheel, Mr. Christensen, the captain, was also in the wheelhouse, and we sighted some sea lions out in the water, and Taylor—it was his first trip up [12] there, and he had never seen any before; so I dashed to the fore-castle and hollered for him to come out and look at the sea lions.

Q. Just go ahead and tell what else you said on that occasion.

A. I can't remember the exact words; but I told him to come up and see the sea lions.

Q. Did you say anything about guns or about shooting at them? A. No.

Q. When you did that, what happened next?

A. Well, he came up the companionway and got into one of these—well, one of these wide boards across the deck, and I stood right behind him on some of these box boards.

Q. Did Taylor have his gun?

A. I don't remember whether he did or not; if he did, I didn't see him.

Q. In any event, what was Taylor, particularly, doing there at that time?

(Testimony of Adolph Sundberg.)

A. He was standing there looking at it, and I was pointing over his shoulder.

Q. Where were the sea lions?

A. On the starboard side.

Q. How far away from the ship?

A. I could not judge—possibly a hundred yards or so.

Q. Then what took place while you and Taylor were there looking at the sea lions?

A. I was pointing at these sea lions, and they were—we were passing them, and they were getting so they were [13] behind the cabin, and I looked over to the left, and they were over to the starboard, and then another one came out of the water so I says, “By gosh, there is the thing,” and just as I raised my hand, Lewis Varner let drive.

Q. You raised your hand to point to the sea lions—your left hand. To whom were you pointing them out? A. To Irving Taylor.

Q. To Irving Taylor? A. Yes.

Q. At the time you were starting to point them out to Taylor, did you know where Varner was?

A. No, I did not know. I did not even know he was on deck.

Q. You had not noticed him before?

A. No, sir.

Q. And where did he—did you then turn around and see where he was to locate him on the ship?

A. After I was shot, do you mean?

Q. Yes.

A. Yes. He came right up to me then.

(Testimony of Adolph Sundberg.)

Q. How far away from you was he when he fired the shot?

A. I would not know, because he was behind me; I did not know he was there.

Q. You did not know just where he stood and fired the shot? A. No, I did not.

Q. Where did the bullet hit your hand?

A. Right in the wrist.

Q. What did you do about that immediately?

A. I just grabbed it and held it out. [14]

Q. What was done after that? You need not go into too much detail about that.

A. They took me in the cabin quarters and administered first aid, and put a splint on it. I think Lewis Varner put the split on it.

Q. And who administered the first aid?

A. Lewis Varner.

Q. The man who fired the shot?

A. Yes, and I believe there was one or two of the other boys that assisted him. I do not know who they were.

Q. About how long after that did you talk about the matter to the captain of the boat?

A. I beg your pardon?

Q. About how long after that did you talk to the captain of the boat about what had happened?

A. Oh, he came in there. I guess he knew what had happened, and he possibly seen it.

Q. What, if anything, did he say about it?

A. Well, he says, "So you got it. That is too bad. I knew I should have told the boys about those

(Testimony of Adolph Sundberg.)

guns; but you know how it is. I hated to do anything.”

Q. And then how long did you remain on the ship? A. It was about eight hours.

Q. Where were you taken?

A. To Seldovia. The Coast Guard Cutter “Hida” was anchored there, and I went aboard her.

Q. Where did she take you?

A. She took me—anyway, they called and took me down from Anchorage and took me to the hospital.

Q. How long were you in the hospital? [15]

A. Four weeks.

Q. What was done there for you?

A. They sewed up the bandages and put the arm in a cast.

Q. What doctor attended you there? Do you know the name of the doctor?

A. Howard Romig, Jr.

Q. From the hospital at Anchorage, where did you go? Did you go from there to a hospital?

A. After I was there four weeks, I went down to—I can’t remember the name of the place—Seward.

Q. Were you in the hospital at Seward?

A. I was there in the hospital.

Q. And how long were you in the hospital?

A. I was there just a few days, and then I took a ship and come down to Seattle.

Q. Were you in the hospital at Seattle?

(Testimony of Adolph Sundberg.)

A. Yes.

Q. How long were you here?

A. I was in the hospital at Seattle from the first of July until the twenty-third of November—October.

Q. What was done for you?

The Court: What hospital?

The Witness: That is the Marine Hospital.

The Court: On Beacon Hill here?

The Witness: That is right.

By Mr. Moulton:

Q. You had no bills for services at the Marine Hospital? A. No.

Q. That is a public health service?

A. That is right. [16]

Q. I didn't hear your answer.

A. That is right.

Mr. Moulton: If your Honor please, I would like to have this paper marked for identification.

The Court: It may be marked as Plaintiff's Exhibit No. 1 for identification.

(The paper referred to was marked "Plaintiff's Exhibit No. 1" for identification.)

Mr. Moulton: I understand counsel has conceded that the charge made was reasonable.

Mr. Seering: I am raising no question as to that.

Mr. Moulton: There remains a balance of \$134.

The Court: I wish you would indicate whether or not you are offering it in evidence; and if you are, then make a statement as to its contents.

(Testimony of Adolph Sundberg.)

Mr. Moulton: I do offer it in evidence at this time, your Honor.

Mr. Seering: No objection.

The Court: It is now admitted.

(The paper previously marked "Plaintiff's Exhibit No. 1" for identification was received in evidence.)

Mr. Moulton: I will ask leave not to read it to the jury at this time further than to say that it shows that there is an unpaid balance of \$134.85.

By Mr. Moulton:

Q. And as I understand, did your hand heal up?

A. It did not get the splint off until the 9th of November, and that was in Portland. When I left the hospital here in Seattle, I went as an out-patient; and then I reported [17] to their sub-station in Portland.

Q. How long did you continue to do that?

A. I made two trips; that would be about four weeks.

Q. Was there any provision made by the Washington Fish & Oyster Co. for your maintenance during this period of time after you left the "Commonwealth"?

A. We had no—oh, they sent me \$50 to get to Seward on so I could get into the hospital there.

Q. So this claim you have for maintenance is credited with \$50 on it? A. Oh, yes.

Q. Did they make any other payments or make any other provision for your maintenance while you were curing your hand?

(Testimony of Adolph Sundberg.)

A. Why, no; but they gave me \$15 to go on when I left the hospital.

Q. Then, there is a credit of \$65.

A. That is right.

Q. How soon were you able to use the hand at all?

A. Well, it was several weeks after I got it out of the splint before I could use it.

Q. And to what extent can you use it now?

A. Well, not very much.

Q. Will you show the jury the present condition of the hand?

A. (Witness exhibiting his hand to the jury): I can. I am able to move it about like that (witness illustrating), and that is about as far as I can move the fingers.

Q. You are able to close the fingers and the thumb, are you?

A. I can close the thumb that far (witness illustrating).

Q. Have you been able to use it at all in work?

[18]

A. Oh, yes.

Q. What can you do with it?

A. In my work, I can hold the rod and I can put it into my hand like that.

Q. As I understand you now, you could not use it for some time after you were hurt?

A. Not until in February, and I worked three days.

(Testimony of Adolph Sundberg.)

Q. February of what year? A. This year.

Q. 1942? A. That is right.

Q. Were you able to do any work or take any employment during the remaining part of 1940 and the whole of 1941? A. No, sir.

Q. What did you do in February of this year?

A. I worked for the U. S. Engineers.

Q. What kind of work did you do?

A. I was a tender on a drag run shovel.

Q. Were you able to perform that service?

A. I was able to do that until the safety committee came by, and they laid me off.

Q. And how soon thereafter did you find other employment? A. It was March 7th.

Q. And what work was that?

A. That was checking at one of these defense schools.

Q. How long did you keep on doing that?

A. I worked there about nine days in the first school, and I was transferred after I was laid off about a week—they cut those schools out, and I was transferred to a different class of work until the 7th of June. [19]

Q. Of this year? A. Of this year.

Q. And what have you been doing since then?

A. I have been welding down in the shipyard.

Q. Were you able to do that?

A. I can get by with that.

Q. How can you manage it without the use of your left hand?

(Testimony of Adolph Sundberg.)

A. I really don't need more than one hand. I can brace this a little bit with the other one.

Mr. Moulton: I think that is all on direct examination.

Cross-Examination

By Mr. Seering:

Q. Your arrangements on both occasions when you were employed with the Washington Fish & Oyster Co. were with Mr. Jensen; is that correct?

A. That is correct.

Q. And the sum and substance of your conversation in 1940—that is the year in question when you were injured—was that you asked him if you could go north and fish, and he said that you could?

A. Yes, and I asked if I could go up on this boat "Commonwealth," and he said, "Yes."

Q. And had you not been permitted to go up on the "Commonwealth," would you have paid your own transportation by steamship?

A. That is right.

Q. Many of the men did that?

A. I guess a few did.

Q. And it was largely an accommodation on the part of the Washington Fish & Oyster Co. that you were permitted to [20] go on the tender, provided there was room? A. Well, yes.

Q. It saved you about \$50 or \$51 steamship passage, didn't it? A. That is right.

Q. Now, there was no conversation between you or anyone representing the Washington Fish & Oys-

(Testimony of Adolph Sundberg.)

ter Co. to the effect that you had to stand watch, was there? A. No, sir.

Q. Or that you had to do any work on the way up? A. No, sir.

Q. And there was no conversation with the captain to that effect?

A. Not with the captain, no. I just asked the engineer if I could stand watch.

Q. In fact, the men got together and they actually agreed among themselves that you would stand watches?

A. Well; yes, sir; that is what it amounts to; but it is a known fact that they expect that of you.

Q. But you had no specific orders from anybody? A. No, sir.

Q. Now, what watch were you standing?

A. The engine room watch, as an oiler.

Q. What hours?

A. From three to six a. m. and three to six p. m.

Q. You were oiling? A. That is right.

Q. And on this boat there wasn't a great deal of work to do, was there? You didn't do much work, did you? A. No. [21]

Q. You didn't have much to do? A. No.

Q. What time of day did the boat leave Seattle?

A. It was in the afternoon sometime; I would say it was between three and four o'clock.

Q. On May 11th?

A. On May 11th, yes.

(Testimony of Adolph Sundberg.)

Q. So that by the next day, you were well into Canadian waters?

A. Well, not well into them; but we were in Canadian waters.

Q. It takes only about five hours to get up to the Canadian waters?

A. It was late, and it was dark when we got to the Canadian waters.

Q. There wasn't any shooting, of course, in Puget Sound water? A. No, sir.

Q. As a matter of fact, there wasn't any shooting until just shortly before this accident happened, was there? A. Oh, yes, sir.

Q. Isn't it a fact that is the only shooting from the boat, taking place very close to where this accident occurred? A. No, sir.

Q. Now, on this occasion, you called down the companionway to Irving Taylor asking him to come up, didn't you? A. That is right.

Q. Did you call to anyone else? Did you call down and say, "Hi, fellows, come up here"?

A. I called to Irving to come up, because I knew he had not been up there before; all the rest of the fellows had. [22]

Q. Did you tell them to bring their guns?

A. No, sir.

Q. Did you know that Irving had a gun?

A. Yes, sir.

Q. You knew that he had done some shooting before this, didn't you? A. Yes, sir.

(Testimony of Adolph Sundberg.)

Q. And you knew, did you not, that he brought his gun up with him on this occasion?

A. I do not recall whether I did or not.

Q. You didn't. He was standing right in front of you, I believe you said? A. Yes, sir.

Q. You were pointing the sea lions out to him?

A. Yes, sir.

Q. Now, can you tell me definitely whether he had his gun or whether he did not?

A. I do not remember whether he did or not. If he did shoot it, I would know.

Q. As a matter of fact, he was pointing at the sea lions with his rifle, wasn't he?

A. I don't think so.

Q. You have no recollection of that at all?

A. No, sir.

Q. What took place, wasn't it, that he was aiming, and the sea lions had gone under the water just before he came up there, and you pointed out where they were?

A. No. They will still up when he got there.

Q. And he put his rifle down and then you pointed, and that was the time that you were shot; isn't that right? [23]

A. I pointed out another sea lion, yes.

Q. Now, where were you standing? By the way, let's go back a little bit. Now, it is my—I believe you said that this original group was somewhat scattered. A. Yes.

Q. And this one came up over to the left, and you pointed it out to him? A. Yes, sir.

(Testimony of Adolph Sundberg.)

Q. Where were you standing in relation to the rail?

A. Well, I was standing almost amidships.

Q. And how far from the rail would that be?

A. Oh, I would say about twelve feet or so.

Q. Are you sure that you were not standing—that all the way through you were standing very close to the rail, within a couple of feet of it?

A. I know we were not, because Irving was standing in the skiff—about the middle of the skiffs; so we could not have been standing near the rail, and I was directly behind him.

Q. Wasn't the deck all piled with stuff and different things, and there was a large tank there and so on and——

A. (Interposing): Yes, sir.

Q. (Resumed): —that everything was occupying the center of the deck?

A. No.

Q. Did you know that Lewis Varner had come up on deck?

A. No, I didn't.

Q. And that he had his rifle?

A. No, sir.

Q. You did not know he was there at all? [24]

A. No, I did not.

Q. Was there anyone else that you noticed?

A. No, I did not notice anyone else but Irving and myself.

Q. Had any shots been fired before you were injured?

A. Not right before, no.

Q. How recently had there been shooting?

A. I would not say there had been any shooting that day before I was shot, because I don't remember.

(Testimony of Adolph Sundberg.)

Q. But so far as you remember, then, you do not know that anyone had a rifle there at that time?

A. No, sir.

Q. And you are sure that when you called the men, you did not ask them to bring their rifles?

A. No, sir.

Q. Now, you were taken into the captain's cabin after your injury, and you testified to a conversation in which the captain says that he knew he should have told the boys not to shoot. Was there anything else said by you on that occasion? Did you say anything about how it happened?

A. No, I didn't.

Q. Did you make any statement as to whether it was your fault or not? A. No, sir.

Q. As a matter of fact, didn't you tell Captain Christensen that you felt it was entirely your fault, and you had only yourself to blame?

A. No, sir.

Q. Do you remember the time when your deposition was taken in my office last February?

A. Yes, sir. [25]

Q. And at that time you made—you made no statement at all as to what you have just quoted Captain Christensen as saying, did you?

A. I do not remember that I did or not.

Q. You were asked about all the circumstances, and you never at any time made any claim that the captain made a statement to the effect that he should have told the boys not to shoot, did you?

(Testimony of Adolph Sundberg.)

A. I do not remember whether I did or not. If I was asked, I would have answered it.

Q. Had you yourself done any shooting on the trip? A. No, sir.

Q. Had you been present there watching them?

A. Yes, sir.

Q. You were present most of the time when the shooting took place?

A. Well, I would say several times, anyway.

Q. Had they ever shot sea lions or other live targets before this?

A. Oh, yes,—not at sea lions, no; but they had shot at other things.

Q. What?

A. Well, little blocks of wood or things like that.

Q. Now, at the time this happened, you were off watch and you had no duties about the ship at all? A. That is right.

Q. It happened about what time of day?

A. Well, it was about—about ten o'clock at night, or shortly after.

Q. Wasn't it about eight o'clock? [26]

A. Well, that is right. We didn't set our clock back; that is Seattle time.

Q. And Lewis Varner was also off watch at the time?

A. I do not remember what watch he had then.

Q. The boys had all been down below and were relaxing when you called to them?

A. I do not think Lewis was on duty.

(Testimony of Adolph Sundberg.)

Mr. Seering: That is all.

The Court: Is there anything else?

Mr. Moulton: No, your Honor.

The Court: You may be excused from the stand.
Call your next witness.

Mr. Moulton: I would like to ask the witness another question or two, if your Honor please, which I omitted.

The Court: Very well.

Redirect Examination

By Mr. Moulton:

Q. What information can you give the jury, Mr. Sundberg, as to how much the trip would fairly yield in wages if you had been able to perform the work?

Mr. Seering: That is objected to, if your Honor please. I think the testimony of this witness on that would be pure hearsay and speculative.

The Court: Objection overruled.

By Mr. Moulton:

Q. I will change that. How much did you earn the year before?

A. Well, we had a very poor season the year before; it was a little less than \$400; I do not remember the exact [27] figures.

Q. Do you know about what average earnings the men who work at that get?

A. I checked and they told me——

The Court: He cannot say what they told him.

By Mr. Moulton:

Q. Well, do you know what they averaged?

(Testimony of Adolph Sundberg.)

I think I will suspend the examination of this witness and call another witness.

(The witness was excused.)

MR. LEWIS JACOB VARNER

was called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Moulton:

Q. Your name is what?

A. Lewis Jacob Varner.

Q. And you were on this boat, the "Commonwealth"?

A. Yes, sir.

Q. Which went to Port Williams, Alaska, and fished during the fishing season, for the Washington Fish & Oyster Co., did you?

A. Yes, sir.

Q. How many boats were fishing for the company?

A. Well, I don't know. There was quite a few boats.

Q. What do you know about what the average earnings of the boats are for the season?

A. Well, it was around \$300—a very poor season. [28]

Q. \$300 for each boat? A. Yes.

Mr. Moulton: That is all.

Mr. Seering: No questions.

The Court: You may step down.

(The witness was excused.)

The Court: Call your next witness.

Mr. Moulton: The plaintiff rests, your Honor.

The Court: The plaintiff rests.

Plaintiff rested.

The Court: The defendant may proceed.

Mr. Seering: The defendant would like to address the Court at this time in the absence of the jury, and make a motion.

The Court: Very well. The jury is excused for the noon recess, or will be excused in just a moment.

(Whereupon, the jury was admonished by the Court.)

(Whereupon, by the direction of the Court, the following proceedings were had in the absence of and out of the hearing of the jury:)

The Court: You may proceed.

Mr. Gose: May it please the Court, the defendant at this time moves for a directed verdict in favor of the defendant in this case, reserving, as the rules entitle us to, the right to proceed in the event that the motion should be denied; that motion being based upon two contentions: The first, that the plaintiff, under the evidence, has shown, and it appears affirmatively, that the plaintiff was not in the course of his employ- [29] ment at the time that he sustained the injuries of which he complains; second, that there is no showing of any negligence upon the part of the defendant in this case and, particularly, no showing of negligence on the part of the defendant or any of his agents then engaged in the course of their employment.

(There was further argument on the motion.)

(Which motion was sustained by the Court, to which ruling of the Court, the plaintiff, by its counsel, then and there duly objected, which objection was overruled and disallowed.)

[Endorsed]: Filed Mar. 5, 1943. [30]

[Endorsed]: No. 10394. United States Circuit Court of Appeals for the Ninth Circuit. Adolph Sundberg, Appellant, vs. Washington Fish & Oyster Company, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed March 23, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

Case No. 10394

ADOLPH SUNDBERG,

Appellant,

v.

WASHINGTON FISH & OYSTER COMPANY,
a corporation,

Appellee.

APPELLANT'S STATEMENT OF POINTS
and
DESIGNATION OF PARTS OF RECORD.

On this appeal appellant intends to rely on the following points:

1. The District Court erred in dismissing appellant's complaint at the close of appellant's case on appellee's motion, and erred in not submitting appellant's case to the jury.

Appellant will make the following contentions:

(a) The evidence showed appellant to be a seaman within the meaning of the Seamen's Act. (U.S.C.A. Title 46, Sec. 688)

(b) In the alternative, if appellant was not a seaman, then he was a passenger on board appellee's vessel.

(c) In either of the events specified in subdivisions (a) and (b) hereof, it was the duty of appellee to keep and maintain the ship in a reasonably safe condition for appellant's occupancy, and to exercise

reasonable supervision and control over the members of the ship's crew to the end that appellant be not exposed to unnecessary hazard during his occupancy of the ship.

(d) The evidence offered by appellant established that with the knowledge and tacit consent of the master of the ship members of the crew, **other than** appellant, continued for a considerable period of time to bring loaded high-powered rifles onto the ship's deck, and without supervision or control to fire the same at random from and across the deck of the ship, and as a result thereof appellant was struck by a ball from one of said rifles and sustained grave and permanent personal injury.

(e) Appellant will contend that the failure of the master of the ship to exercise supervision or control over the members of the crew under the circumstances shown by the evidence constituted actionable negligence and entitled appellant to have the evidence submitted by him considered by the jury.

(f) Appellant will contend that in any event while in the service of the ship as a seaman he sustained personal injury requiring cure, and incurred obligations in that behalf, and was entitled to recover maintenance and cure therefor under the general principles of maritime law.

Appellant requests that there be printed under the direction of the Clerk of the above entitled court the entire transcript of the record as certified to said

Clerk of the District Court, together with this statement of points and designation of parts of the record.

MOULTON & DAVIS

EDGAR E. NEAL

Attorneys for Appellant

ARTHUR F. MOULTON

of Counsel.

Service by copy of the foregoing Appellant's Statement of Points and Designation of Parts of Record is hereby admitted at Seattle, Washington, this 26th day of March, 1943.

J. GORDON GOSE

Of Attorneys for Appellee

[Endorsed] Filed Mar. 29, 1943. Paul P. O'Brien,
Clerk.

In the United States
Circuit Court of Appeals
For the Ninth Circuit

ADOLPH SUNDBERG,

Appellant,

v.

WASHINGTON FISH & OYSTER COMPANY,
a corporation,

Appellee.

Appellant's Brief on Appeal

Upon Appeal from the District Court of the United
States for the Western District of Washington,
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FILED

MAY 17 1943

PAUL P. O'BRIEN,
CLERK

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In the United States
Circuit Court of Appeals
For the Ninth Circuit

ADOLPH SUNDBERG,

Appellant,

v.

WASHINGTON FISH & OYSTER COMPANY,
a corporation,

Appellee.

Appellant's Brief on Appeal

Upon Appeal from the District Court of the United
States for the Western District of Washington,
Northern Division.

**STATEMENT OF PLEADINGS AND FACTS
SHOWING JURISDICTION**

This is an action brought under the provisions of the Act of Congress of June 5, 1920, C. 250, Section 33, 41 Stat. 1007 (Section 688 Title 46, U.S.C.A.) On this ground, the court below had jurisdiction.

It is an action, as shown by the pleadings and proof, to seek recovery for a maritime tort resulting in personal injuries received upon a vessel in navigable water, or, in the alternative, to recover maintenance and cure according to the general rules of admiralty, and it is within the general admiralty and maritime jurisdiction of the District Courts of the United States. No question was made in the court below touching the venue chosen or challenging the jurisdiction.

In any event, a diversity of citizenship exists between appellant and appellee, appellant being a citizen of the State of Oregon, and defendant a corporation incorporated under the laws of the State of Washington, and the matter in controversy exceeds \$3000.00, being the sum of \$21,464.85. The court below had jurisdiction, and the Circuit Court of Appeals has jurisdiction by virtue of Section 225 Title 28, U.S.C.A. (amended act May 9, 1942, Sec. 2, 56 Stat. 272).

STATEMENT OF THE CASE

Appellant brought this action in the court below, electing to proceed in conformity with the provisions of Section 688 Title 46, U.S.C.A., and, in the alternative, sought maintenance and cure in conformity with the general principles of admiralty. The case being at issue, the same came on for trial before the District Court and a jury, and at the close of appellant's evidence, upon motion of appellee, the court dismissed the cause by a final judgment, awarding costs against appellant. (Tr. 10.)

It is not believed that the issues require an analysis of the pleadings, inasmuch as no questions arise save the sufficiency of the evidence to entitle the appellant to relief.

The evidence shows that appellant, a man 33 years of age, a fisherman by occupation, was employed by appellee during the fishing season of 1939 under an informal oral arrangement, by the terms of which appellant went from Seattle, Washington, to the cannery of appellee in Alaska, performed certain land service there, and upon completion of that service participated in the operation of a fishing boat of appellee. The arrangement made in the year 1939, being the year prior to that in which the injury was received, was that appellant would make the trip from Seattle, Washington, to Port

Williams, Alaska, on appellant's diesel motorship Commonwealth and would assist in the navigation of the ship by standing a wheel watch in the navigation of the ship, paying nothing for his transportation and receiving no compensation for his services at the wheel. (Tr. 20, 21, 22.) During that year he performed about eight days' work at the cannery of appellee at Anchorage, being paid therefor by appellee \$5.00 per day and board. Board was furnished by appellee on the ship. (Tr. 22.) The nature of the employment was commonly understood by both appellant and appellee, and, being desirous of securing the same employment in the year 1940, appellant applied to appellee's agent, Mark Jensen, inquiring if he could again go on the boat and was told that he could. No additional instructions were given, but appellant understood that he would be required to serve a watch each day as part of the general arrangement. (Tr. 23.) Having boarded the boat and being desirous of serving in the engine room rather than at the wheel, appellant asked the engineer whether he could serve an engine watch instead of the wheel watch and was told that he could. (Tr. 23.) With no more formal arrangement as to his duties than this, appellant did, from the time the vessel left until the time of his injury, serve a six hour engine watch each day in assisting in the navigation of the vessel.

In arranging for the trip there was no specific

conversation in which appellant was ordered to stand watch, but it was a matter of common understanding among the men that if they went on the boat they would be expected to perform this service. (Tr. 38.)

The Commonwealth was a diesel motored vessel about 110 feet long (Tr. 23), and about 28 feet across the beam (Tr. 24). She was heavily laden and the deck was crowded with freight, consisting of several skiffs, a large cold storage plant, quantities of box boards, and other freight, leaving very little room on the deck. (Tr. 24.) There was passage way on one side of the vessel and a passage way across the ship. (Tr. 24, 25.)

On the second day out, two members of the crew, Irving Taylor and Lew Varner, each brought on deck a high powered rifle. The vessel was then in Canadian waters, and after one or two shots had been fired by the men with the rifles, Captain Chistensen, the master of the vessel, said to the men with the rifles, "You had better not fire while we are in Canadian waters, or we might get into trouble." (Tr. 25.) These two men were members of the crew, and at the direction of the master desisted from shooting and did not fire any more shots while the vessel was in Canadian waters, which was a period of three or four days. (Tr. 26.)

However, after the vessel left Canadian waters

and within an hour or two after it left Ketchikan, the two men brought their rifles on deck again and began firing from the deck of the vessel. (Tr. 27.) They fired mostly from the rail, sometimes standing four to six feet inside the rail and firing out over the rail. The Captain during the firing was at times in the wheel house and at times on the deck, and the shooting was done in his presence. There were at least several shots fired daily from the vessel, and this shooting continued for about four days. No further orders were given by the Captain to the men to desist from the shooting, and there was no interference by the master with the possession or discharge of the guns. (Tr. 28, 29.)

On the day of the accident appellant, Captain Christensen, and another, were in the wheel house. Some sea lions were sighted and appellant went to the forecabin and called below deck for Irving Taylor to come on deck to see the sea lions. Taylor was a friend of appellant and, it being his first trip, had never seen sea lions. (Tr. 29.) Appellant had never owned a gun in his life and had taken no part in the firing of guns from the vessel, and had no gun of his own. He said nothing to Taylor or to anyone about shooting at the sea lions, but merely called Taylor to come on deck and see them. (Tr. 29.) Taylor thereupon came up the companionway and stood at the rail on some boards, looking at the sea

lions which appellant was pointing out to him. So far as appellant was able to recall, Taylor did not have his gun with him. The sea lions were on the starboard side of the ship a hundred yards or so away, and appellant, standing behind Taylor, was pointing at the sea lions to call them to Taylor's attention. He was pointing with his left hand when, without warning, Lewis Varner, who was several feet behind appellant and Taylor, fired at the sea lions, apparently attempting to shoot past appellant, but accidentally hitting appellant's left wrist. (Tr. 31, 31.)

It is not necessary to detail the injuries further than to say that appellant's left hand was virtually destroyed; that the injury incapacitated him for a long period of time and caused him to incur obligations for hospital and medical care and treatment upon which a balance of \$134.85 remained unpaid. Appellee advanced him money to the extent of \$65.00 but no more, and substantial sums would have been due him under the general principles of admiralty as maintenance and cure if he was entitled to recover on that ground. It is not deemed necessary to compute those items for the purpose of this appeal, yet they are fairly computable from the record.

Appellant was taken into the Captain's quarters and given first aid, and in the conversation occurring

there the master of the boat said to appellant:

“So you got it. That is too bad. I knew I should have told those boys about those guns; but you know how it is. I hated to do anything.”
(Tr. 31, 32.)

Upon this evidence, which stood undisputed at the time of the motion, appellee presented a motion in the form of a motion for directed verdict on the ground, first, that appellant was not in the course of his employment at the time he sustained the injuries complained of, and, second, that there was no showing of negligence upon the part of appellee in the case, and particularly no showing of negligence on the part of the appellee or any of its agents then engaged in the course of their employment. (Tr. 46.)

Treating the motion as one for dismissal under the rules, the court granted the motion and ordered that appellant's complaint and both causes of action therein alleged be dismissed with prejudice and with costs. (Tr. 10.)

Appellant brings this appeal to review the court's action on this motion.

**SPECIFICATION AND ASSIGNMENT OF ERRORS AND
POINTS ON WHICH APPELLANT INTENDS
TO RELY**

1. The court erred in holding that the evidence was not sufficient to entitle appellant to have his case submitted to the jury for their verdict, and in allowing the motion to dismiss, and in dismissing the cause.

For the purpose of this appeal, appellant subdivides this assignment of error into the following contentions:

(a) The evidence showed appellant to be a seaman within the meaning of the Seamen's Act. (U.S.C.A. Title 46, Sec. 688.)

(b) In the alternative, if appellant was not a seaman, then he was a passenger on board appellee's vessel.

(c) In either of the events specified in subdivisions (a) and (b) hereof, it was the duty of appellee to keep and maintain the ship in a reasonably safe condition for appellant's occupancy, and to exercise reasonable supervision and control over the members of the ship's crew to the end that appellant be not exposed to unnecessary hazard during his occupancy of the ship.

(d) The evidence offered by appellant established that, with the knowledge and tacit consent of the master of the ship, members of the crew, other than appellant, continued for a considerable period of time to bring loaded high-powered rifles onto the ship's deck, and without supervision or control to fire the same at random from and across the deck of the ship, and as a result thereof appellant was struck by a ball from one of said rifles and sustained serious and permanent personal injury.

(e) Appellant will contend that the failure of the master of the ship to exercise supervision or control over the members of the crew under the circumstances shown by the evidence constituted actionable negligence and entitled appellant to have the evidence submitted by him considered by the jury.

(f) Appellant will contend that in any event while in the service of the ship as a seaman he sustained personal injury requiring cure, and incurred obligations in that behalf, and was entitled to recover maintenance and cure therefor under the general principles of maritime law.

ARGUMENT AND AUTHORITIES

(a) *The evidence showed appellant to be a seaman within the meaning of the Seamen's Act.* (U.S. C.A. Title 46, Sec. 688.)

- Domandich v. Doratich, et al, 5 P. (2d) 310;
 Sandanger v. Carlisle Pkg. Co., 192 P. 1005;
 C. P. Co. v. Sandanger, 259 U. S. 255, 66 L. Ed. 927;
 The Sea Lark, 14 F. (2d) 201;
 Warner v. Goltra, 293 U. S. 155, 79 L. Ed. 254;
 Int. Stevedor. Co. v. Haverty, 272 U. S. 50; 71 L. Ed. 157;
 Cromwell v. Slaney, 65 F. (2d) 940;
 The Carrier Dove, 97 F. 111;
 The Norland, 101 F. (2d) 967;
 The Buena Ventura, 243 F. 797.

Appellant's contract of employment was informal. Mere informality, however, cannot prevent a judicial determination of its legal effect. Appellant joined a crew of men on a trip, the nature of which was well understood. It was a season's employment, including several elements. The men, the vessel and large quantities of material were to be transported from Seattle to Port Williams, a voyage requiring several days. Some shore work was to be done at

Port Williams, and fishing was to be carried on in boats furnished by appellee. Not all of the crew of men required by appellee traveled by the boat. Some went by other means of transportation at their own cost. A comparative few went with the boat, and these were expected to assist in the navigation of the boat. It is true that an advantage resulted to the men who went with the boat. They escaped payment of their transportation costs. But advantage also resulted to appellee. It escaped paying a crew and was at no expense for the men needed to navigate the vessel beyond the cost of their meals. It is not believed that the informality of the contract, nor the fact that no fixed wage was paid for the services rendered in navigating the vessel, prevents the conclusion that appellant was an employe and a seaman.

We cite with particular emphasis the Washington case of *Domandich v. Doratich*, *supra*. In that case the Supreme Court of Washington considered a state of facts very close to the facts at bar. The contract there was informal. The compensation was based upon the amount of fish caught. Yet the court held the plaintiff to be an employe and a seaman. The court cited *No. Alaska Salmon Co. v. Larsen*, 220 F. 93, 94, wherein this court held that the general contract of an employe on a trip virtually identical with that involved here was maritime in

its nature, and that the shore services were merely incidental and subsidiary to the main contract.

Here there was no specific discussion of the terms of the contract. As appellant put it, it was "a known fact that they expect that of you." (Tr. 38.) The answer conceded that appellant was being transported as an employe. (Tr. 8.) It was alleged in the answer that employment was to begin upon arrival at Port Williams. As the evidence stood when the motion was acted upon, however, there was no dispute that the services rendered by appellant were accepted by appellee, and it is not conceived that had the case continued any dispute could have arisen on that subject. Clearly, under the authorities cited a time would have arisen when appellant would have been entitled to expect of appellee performance of the duties owed by a master to a servant. It seems to us logical, and we believe the authorities sustain the view, that those duties began when appellant entered upon appellee's vessel and began the performance of service incidental to his season's contract. We appreciate that the Washington authorities cited come from a state court and may not be deemed to be binding authority upon this court. We submit, however, that they are of high persuasive value, particularly inasmuch as they are based upon a careful analysis of the cases from the federal courts.

It is to be presumed that the framers of the Seamen's Act were familiar with the terminology employed in the admiralty courts. As early as 1899, the federal courts had held fishermen to be seamen. In *The Carrier Dove*, *supra*, the following significant language is used:

“Fishermen are seamen, having uses and customs peculiar to their business, but are, at the same time, except as modified by their peculiar contracts, express or implied, protected by the law as other seamen are.”

And in *The Buena Ventura*, *supra*, the court said:

“It is preferred to put the decision on this broad ground; i.e., that a man who serves the ship as the result of a contractual engagement of any kind, and serves in her navigation, is a member of the crew and entitled to the privileges of a seaman.”

As was pointed out in *Warner v. Golta*, *supra*, it was certainly not the purpose of the Seamen's Act to narrow the concept of the term seaman, or to limit the remedial rights created by the act to a small class. The employment shown by the evidence here is not at all uncommon in Pacific Coast fishing operations. A large number of men go annually to Alaska. Some find transportation at their own cost. Others, as an

incident to a season's contract, assist in navigation of the ship. It is submitted that under the authorities cited, as well as the logic of the Seamen's Act itself, those who assist in navigation of ships on these long and hazardous voyages ought not to be denied the rights created by the Seamen's Act on a hypertech- nical view of their relationship to the owners of the ship.

(b) In the alternative, if appellant was not a sea- man, then he was a passenger on board appellee's vessel.

Simmons v. Oregon Railroad Co., 41 Or. 151;
69 P. 440, 1022;

Waterbury v. New York Central and H. R. R.
Co., 17 F. 674.

It is conceded by the answer that appellant was lawfully upon the vessel, and it is claimed that he was being transported as an employe from Seattle to Port Williams. We have cited but few authorities to the proposition that an employer who furnishes an employe with transportation owes to the employe during the course of the transportation the duty of exercising reasonable care, to the end that the employe does not suffer injuries preventable by the exercise of that care on the part of the employer. If the relation is not strictly that of passenger and carrier, it is a relationship analagous to it. The duties

are the same. The liability in the event duty is not performed is the same. It is our view that the rules of civil procedure for the District Courts are sufficiently broad that if appellant had misconceived his remedy and claimed under the Seamen's Act when he should have claimed as a passenger, the court was none the less in error in dismissing his cause. Rules 1 and 2 seem to cover the matter. They provide but for one form of action to be known as a civil action. Subdivision (f) of Rule 7 provides for the construction of pleadings so as to do substantial justice. Hence, we submit that even though it be held that appellant was not a seaman, he was entitled to go to the jury upon his evidence. The cause was maritime in any event; there was a diversity of citizenship among the parties; the court had undoubted jurisdiction; the facts relied upon were concisely and directly stated in the complaint. If there was a variance, it was one of form only and not of substance.

(c) In either of the events specified in subdivisions (a) and (b) hereof, it was the duty of appellee to keep and maintain the ship in a reasonably safe condition for appellant's occupancy, and to exercise reasonable supervision and control over the mem-

bers of the ship's crew to the end that appellant be not exposed to unnecessary hazard during his occupancy of the ship.

Cortes v. Balt. Insular Line, 287 U. S. 367; 77 L. Ed. 368;

McCall v. Inter-Harbor Nav. Co., 154 Or. 252; 59 P. (2d) 697;

State S. S. Co. v. Berglann, 40 F. (2d) 456; (certiorari denied 282 U. S. 868; 75 L. Ed. 767);

Compton v. Hammond Lbr. Co., 153 Or. 546; 58 P. (2d) 235; (certiorari denied 299 U. S. 578, 81 L. Ed. 426);

McGee v. Sinclair, Fed. Supp. Adv. Shts., Feb. 1, 1943; (Vol. 47, No. 10, p. 912.) (D.C. Penn.);

The Lord Derby, 17 F. 265.

It is not believed that the circumstance that appellant was not actively performing his duties in the engine room at the time he was injured prevents the application of the Jones Act to his injury. We submit that cases cited, as well as the logic of the act itself, sustain the proposition that a seamen's employer is liable to him for an injury sustained while he is upon the vessel, if that injury be due in whole or in part to negligence of the employer in failing to exercise reasonable care to the end that the vessel

be a safe place for occupancy by the seaman. In the cases cited this rule has been applied to many situations. A seaman is performing no service while sleeping in his bunk at night, and yet liability under the Seamen's Act has been imposed for negligence of the employer in failing to furnish proper sleeping quarters, or in failing to do any other act which a reasonably prudent person would do in the maintenance of the ship. The term "unseaworthiness" has been given a broad application. It has been said that a ship is seaworthy only if she is properly appareled, and supplied with competent officers and crew, and is in general a reasonably safe place for occupancy. It is not conceived, however, that a refinement of definition of unseaworthiness need be indulged in. Whether we speak of unseaworthiness or of negligence in the discharge of the duties imposed upon those in charge of the ship, the result is the same. Liability is imposed for mal-performance or non-performance of the duty to exercise reasonable care not only in the maintenance of the ship but in the control and management of its affairs.

The case of *McGee v. Sinclair Refining Co.*, *supra*, seems to us in point. Here a seaman was bitten by a small dog not shown to have been of vicious habits. The negligence claimed was the failure of the master to prevent the puppy from being at large on the vessel's deck. The court felt that the fact that dogs

were permitted to wander about the vessel without restraint or supervision entitled the plaintiff to go to the jury. It was held that the jury might properly find from such evidence that the employer failed to perform the duty of exercising reasonable care to the end that the ship be reasonably safe for the seaman, and in the course of the opinion said:

“I feel that as has been stated in *Storgard v. France and Canada S.S. Corp.*, 2 C.I.R., 263 F. 545, the peculiar circumstances which are attendant upon a seaman’s discharge of his duties require that the rules of common law respecting proof of the employer’s negligence be not visited too vigorously upon seamen.”

We think it not necessary to apply this logic to the case at bar. It was probably necessary to apply it to the case cited. There the negligence was slight. It consisted only in permitting dogs ordinarily harmless to be about the deck of the ship where sailors might run into them in the dark or step upon them and be bitten. While we fully agree with the court that the question whether failure to prevent the dogs being about the ship constituted negligence was one for the jury, we are not impressed with the thought that it was an act fraught with such probable serious consequence as to be more than slight negligence. Here, however, with all deference to the trial court,

who felt that no negligence was shown, it is our view that the negligence was glaring.

That an action will lie for any conduct of the master and owners amounting to a want of care for the safety of those lawfully on board the ship, whatever their relationship to the ship, is taught by the early case of *The Lord Derby*, supra. There a pilot, lawfully on the ship, was bitten by a large dog carried as cargo which was chained under a table in the quarters where the pilot left his personal belongings. The decision was not based on the doctrine of scienter as it applies to animals in common law cases, but was predicated upon the view that it was negligence to put the dog there.

The cases, of course, vary in their factual situations but they all proceed upon the basis that the ship and those put in charge of it by the owner are liable in damages to one lawfully on the ship for failure to discharge the duty of seeing to it that conditions upon the ship are reasonably safe, and we submit that failure to prevent the continued use of firearms about the deck of a heavily laden ship is an omission of care which ought to sustain an action by one injured as the result of that failure.

(d) and (e) The evidence showed actionable negligence of the master, which was the proximate cause of appellant's injuries. Contributory negli-

gence was a defense only in mitigation of damages, although appellant contends there was no evidence upon which a jury could have found contributory negligence.

Szesz v. Joyland Co., 257 P. 871 (hearing denied by Supreme Court);

Larson v. Calder's Park Co., 54 Utah 325; 180 P. 599;

Plaskett v. Benton Warren Agri. Soc., 45 Ind. App. 358; 89 N. E. 968;

Thornton v. Maine State Agri. Soc., 97 Me. 108; 53 Atl. 979;

Graffan v. Saco Grange P. H., 112 Me. 508; 92 Atl. 649;

Dietze v. Riverview Park Co., 181 Ill. App. 357;

Olson v. Hemsley, 40 N. D. 779; 187 N. W. 147;

Castle v. Duryea, 2 Keyes (N.Y.) 169;

Stratton v. U. S., 8 Fed. Supp. 429;

Jamison v. Encarnacion, 281 U. S. 635; 74 L. Ed. 1082;

The Estrella, 2 Fed. Supp. 258 (affirmed 67 F. (2d) 991);

The Max Morris, 137 U. S. 1; 34 L. Ed. 586.

It has been difficult to find cases respecting negligence in control of the use of firearms on shipboard. There are many state court cases holding in

effect that wherever numbers of persons congregate together it is actionable negligence for those charged with the duty of keeping the place where such persons congregate reasonably safe to permit the possession or use of loaded firearms. The mere statement of this proposition should furnish its own demonstration. The danger of injury by the uncontrolled and unregulated possession or use of firearms is a matter of common knowledge. It is a matter of common knowledge that most, if not all, incorporated cities and towns have ordinances prohibiting the possession of loaded firearms on the streets. It is a matter of common knowledge that carriers have strict rules touching the transportation of firearms. It is likewise a matter of common knowledge that firearms are a highly prolific source of injury and death. Many persons are injured and killed in gun accidents, and the control of the use of guns has been a serious problem to society since their invention. The problem posed to the court and jury was, first, whether it was reasonably safe for two members of the crew to stand upon the deck of the vessel with loaded high-powered rifles shooting, sometimes from the rail and sometimes from several feet inside the rail, at whatever target intrigued the fancy of the men with the guns. Appellant need contend for no more here than that that question was one for the solution of the jury. It seems un-

necessary to cite authorities for the proposition that the right of trial by jury is sufficiently broad to entitle a suitor to have the judgment of his peers upon the safety or danger involved in particular courses of conduct. The restriction upon this right may be stated by asserting that it does not extend to situations where all fair minds must agree that a given situation is or is not attended with danger, or where the right or wrong of the matter is regulated by positive law. Juries are not entitled to hold that it is safe to cross a railroad crossing without looking or listening. Common knowledge denounces the act as negligence, and the courts can declare such common knowledge. Certainly, neither common knowledge nor positive law approve the promiscuous firing of firearms in any position in which persons may be injured. Whatever rule there is of common knowledge denounces the possession and use of firearms in crowded places as a dangerous and hazardous practice rather than as a safe one, and we submit that a ruling that as a matter of law no danger was incident to the use of firearms under the circumstances shown by the evidence, and that there was no reasonable basis for the jury to find that the likelihood of injury was foreseeable, could not logically be sustained.

It would seem that the statement of the master, shown at pages 21 and 32 of the Transcript, itself

constituted some evidence. It tended to show that the master had prior to the injury been conscious that a dangerous situation existed on the ship. There could be no serious question of the right of the master to regulate the use and possession of firearms, and to prohibit that practice on the ship's deck. If there were, however, any such question, it would so far as this record is concerned be set at rest by the evidence touching the earlier restrictions put upon the use of the guns by the master. While the ship was in Canadian waters the master ordered the guns put away. A fair inference from the order shown by the evidence, and the obedience which the crew accorded to it, would be that the master gave tacit consent to the use of the guns as soon as the ship left Canadian waters. The inference was properly deducible that the master took notice of the possession and use of the guns, and by placing a restriction upon their use while in Canadian waters left the owners of the guns to suppose that their use was permissible out of Canadian waters. The authority of the master on shipboard undoubtedly extended to the members of this crew. Certainly the courts would have sustained the master in the exercise of the powers incident to his position as the same are known to the admiralty law. It has not been suggested that an order of the master to desist from the practice of bringing loaded guns on the

deck and firing from there would not have met with obedience. The presumption is that it would have been obeyed. It was the duty of the members of the crew to obey such an order if it were given. The presumption is strengthened by the evidence that the one order restricting the use of the guns which was given was promptly and cheerfully obeyed. The jury might properly have found, and we believe their finding would have been overwhelmingly sustained by the evidence, that had the master made the one order broader and included in it the use of the fire-arms during the entire voyage, appellant would not have received the grievous injury he did.

(f) In any event, appellant sustained injury while in the service of the ship, required cure, incurred obligations for cure which were not paid, and was entitled to maintenance, cure, and wages to the end of the voyage, under the general principles of maritime law.

The Buena Ventura, 243 F. 797.

It is not thought necessary to cite extensive authority on this proposition. The cases cited under other heads sustain the view that the employment of appellant should have been considered as a season's employment. These cases likewise sustain the view that the fact that a fixed wage per day or hour was not being paid for a particular portion of the

service he was to render did not deprive him of the rights of a seaman, and that inasmuch as he sustained injury he was entitled to the well-known maritime relief of maintenance and cure and wages to the end of the voyage. The voyage contemplated a trip to Alaska, the performance of service there, and return to Seattle. Evidence was offered touching the earnings of others of the crew situated as appellant was, and a sum of money was shown to have been left unpaid as part of the expense of cure. Maintenance was not furnished, and in any event appellant was entitled to relief on this account and the dismissal of his case was error.

Respectfully submitted,

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IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

ADOLPH SUNDBERG,

Appellant,

vs.

WASHINGTON FISH & OYSTER COMPANY,
a corporation,

Appellee,

UPON APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE WESTERN DISTRICT OF
WASHINGTON, NORTHERN DIVISION

BRIEF OF APPELLEE

HAROLD A. SEERING

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IN THE
UNITED STATES
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ADOLPH SUNDBERG,

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WASHINGTON FISH & OYSTER COMPANY,
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Appellee.

No. 10394

UPON APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE WESTERN DISTRICT OF
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BRIEF OF APPELLEE

STATEMENT OF THE CASE

The appellant, Adolph Sundberg, who was the plaintiff in the District Court, received personal injuries consisting of a gunshot wound in the left hand, while aboard the appellee's cannery tender "Commonwealth" in Alaskan waters, en route from Seattle, Washington, to Port Williams, Alaska.

In consequence he commenced this suit. In his complaint he set out two causes of action. Under the first he sought recovery under the Jones Act, U.S.C.A. Title 46, §688, alleging that he was a seaman at the time of the accident, and that his injuries were caused by the negligence of the appellee, Washington Fish &

Oyster Company. Under his second cause of action, presented only as an alternative to the first cause of action in the event that recovery should not be available to him under the Jones Act, he sought recovery for maintenance, wages and cure, according to the rules of the general maritime law, applicable to seamen injured in the service of the ship.

On the trial, when the appellant had rested his case, the appellee moved for a directed verdict and a dismissal upon the ground that the appellant was not in the course of his employment, nor in the service of the ship at the time of the accident, and on the further ground that the evidence did not show negligence on the part of the appellee. These motions were granted and judgment of dismissal of both causes of action was entered (Tr. 46). From this judgment the appellant prosecutes this appeal.

While the facts of the case are relatively simple, there is considerable obscurity as to the details. From the pleadings and the evidence introduced by the appellant it appears without controversy that before going aboard the "Commonwealth" in Seattle, the appellant had been employed by the appellee to fish on shares in one of its boats in Alaska during the 1940 fishing season (Tr. 2, 3, 8, 20). Under this arrangement appellant was to be compensated on the basis of the quantity of fish caught. This employment and compensation would not commence until the appellant had reached the scene of the fishing operations in Alaska. Although the record is somewhat vague on the point, we believe it appears inferentially that the fishing operations in which appellant was to engage

would be on a boat other than the Commonwealth. Certainly there is nothing in the record to indicate that the appellant's services as a fisherman were to be aboard the Commonwealth, and we understand it to be common ground between the parties that such services would be rendered on another boat after appellant arrived in Alaska.

The Commonwealth comes into the picture in this fashion. In order to enter upon his employment, it was necessary for appellant to go to the fishing grounds in Alaska. He could have gone there on one of the regular passenger steamers, at a cost to himself of approximately Fifty Dollars (Tr. 37). Instead he requested and received permission from appellee to make the trip north on the Commonwealth, which was owned and operated by the appellee (Tr. 21, 37). The details as to this arrangement are not made very clear in the record. It appears that the appellant had gone north on a cannery tender belonging to the appellee in the previous year, 1939. Apparently the arrangement in both years was about the same. In any event, the appellant did go aboard the Commonwealth in May, 1940, with the permission of the appellee, and made the trip north on that boat from Seattle to a point near Anchorage, Alaska, where he was removed from the boat by reason of his injuries (Tr. 32).

While aboard the Commonwealth the appellant stood a watch in the engine room and received his board free of charge (Tr. 22). He received no other compensation. Except by way of background to the events which occurred upon the trip, the precise na-

ture of the arrangement under which the appellant went on the Commonwealth is not of any particular moment on this appeal, because the appellee concedes that although the arrangement was very informal and largely for appellant's benefit, nevertheless appellant was a seaman within the meaning of the Jones Act.

Turning to the events upon which appellant seeks to predicate liability, the record becomes more disjointed and incomplete, at least as far as details are concerned. The only testimony on the subject is that of appellant himself. That testimony is unusually brief for a case of this character, and either omits details or gives them in rather ambiguous fashion. It is somewhat difficult to paraphrase the appellant's account of events accurately, but we think that the following fairly analyzes that portion of his testimony concerning the facts upon which he seeks to hold the appellee liable:

Appellant testified that the Commonwealth was about 110 feet long and 28 feet wide; that it carried a deck load which "left very little room on the deck" (Tr. 23, 24). Just how much room this was is not clear. Appellant states, "We could get down one side, but not on the other." And further, "There wasn't any room except just a little passageway on the side" (Tr. 24, 25). It will be observed that this does not give any exact notion of the amount of clear deck space, does not identify which side of the boat had the available passageway, and does not give a very clear picture of the condition of the deck in general.

The appellant in his testimony identifies four other persons as having been aboard the boat. One of these, one Walter Mustola, who was at the wheel at the time that the appellant was injured, is not an actor in any of the events concerning appellant's injuries (Tr. 29). The other three are Captain Christensen, Irving Taylor and Lewis Varner. Irving Taylor's status aboard the boat is not identified in any fashion whatsoever. Likewise, the status of Lewis Varner with relation to the boat was not identified by the appellant on direct testimony, but upon cross examination he stated that he did not think that Varner was on duty at the time of the shooting (Tr. 43). Just what Varner's duties were is in no place touched upon. The appellant testified that Varner and Taylor both had rifles aboard the boat, and so far as can be gathered from the testimony, these men had the guns simply for their own entertainment and purposes (Tr. 25).

The guns were not fired while the boat was traveling in Puget Sound (Tr. 39) but after she had entered Canadian waters Varner did some shooting until the Captain said, "You had better put the guns away while we are in Canadian waters, or we might get into trouble" (Tr. 25). It will be noted that in the testimony the appellant refers only to Varner having his gun while in Canadian waters, but that in describing the language of the Captain he refers to guns in the plural. This is just one of the innumerable instances in which it is difficult to describe fairly what the appellant's testimony was, because of the doubtful implications which arise from the language

used. The appellant does not explain what the Captain meant by the suggestion that "we might get into trouble," but we surmise that he referred to some possible disapproval on the part of the Canadian authorities, quite possibly arising from the fact that at that time the Dominion of Canada, unlike the United States, was at war.

In any event, the boat proceeded to Ketchikan without any further firing of the guns (Tr. 26, 27). She put in at Ketchikan and after leaving there both guns were again brought on deck, apparently by their owners, Varner and Taylor (Tr. 27). The following verbatim testimony gives the appellant's version of the use to which the guns were put at this time:

"Q How many of the guns came on deck then?

A Two.

Q What was done with them?

A Oh, just shooting.

Q From what point on the deck were they fired?

A Mostly from the rail.

Q Were they at anytime fired otherwise than from the rail?

A No, not very much, no. I do not recall seeing anybody shooting clear across the deck; but they would stand inside the deck, possibly four to six feet, and shoot over the rail." (Tr. 27)

The appellant then testified that the Captain was aware that shooting was going on; that "There was quite a bit of shooting at times," but that he wouldn't attempt to estimate the number of shots except to say that several shots were fired a day until he was in-

jured about four days later (Tr. 28). He further testified that he never heard the Captain give any orders not to fire the guns (Tr. 29). On cross examination he testified that shots were fired at targets of different kinds (Tr. 43).

Coming to the actual occurrence of the appellant's injury, appellant states that he was on deck when some sea lions were sighted in the water; that Taylor had never seen any sea lions before, and that appellant called to Taylor, who was below deck, to come up and see the sea lions (Tr. 29). Taylor did come on deck in response to this call, and Varner came also, although appellant says that he did not know this until after he was shot. Varner brought his gun with him (Tr. 29, 32). As to Taylor, the appellant says that he did not know whether he also brought his gun or not (Tr. 39, 40, 41). This is an amazing piece of testimony inasmuch as the appellant states that he took a position right behind Taylor and proceeded to point out the sea lions to him. It is impossible to believe, under the circumstances, that appellant could be in doubt as to whether Taylor had his gun or not. The exact location in which the appellant and Taylor were standing is not made precisely clear by the appellant's testimony. On direct examination he said that Taylor came up the companionway and "got into one of these—well, one of these wide boards across the deck, and I stood right behind him on some of these box boards" (Tr. 29). On cross examination appellant testified that he was standing almost amidships, about twelve feet or so from the rail, and that Taylor was standing "in the skiff—about the middle

of the skiffs," and that appellant was directly behind him (Tr. 41).

We shall not attempt to solve this somewhat confused account as to just where the appellant and Taylor were. Wherever they were, the appellant says that the sea lions were on the starboard side and the boat was passing them so that they were getting behind the cabin. Then another sea lion came up over to the starboard, and the appellant extended his hand and pointed this sea lion out to Taylor. At the same moment Varner fired his gun, the bullets striking appellant in his extended left hand (Tr. 29).

These are the facts upon which appellant sought to make out his case.

It should be observed that there is no suggestion that Varner, at the time of the shooting, was acting in the course of any employment on behalf of the appellee, and no claim is predicated upon his negligence, assuming that he was negligent. Rather the entire claim of negligence is based upon the contention that the Captain should not have permitted the guns to be shot from the ship. There is no contention that the Captain had any opportunity to prevent the shooting on the particular occasion when the appellant was injured. Rather appellant's position seems to be that the Captain should have issued a blanket order against the firing of the guns. The appellant does rely to some extent on a statement made by the Captain to him after he was injured. This statement, on analysis, is most non-committal. The Captain is asserted to have said: "So you got it. That is too bad. I knew I should have told the boys about those guns;

but you know how it is. I hated to do anything" (Tr. 31, 32).

The remainder of the testimony goes simply to the question of damages. We are not concerned with that question, or the testimony relative thereto, on this appeal, inasmuch as the only question is whether the appellant had made out a case of liability at the time when appellee's motion to dismiss was interposed at the close of appellant's case.

ARGUMENT

GENERAL PRINCIPLES INVOLVED

The general principles of law applicable to this action are no doubt well known to this Court, but for the sake of convenience can be briefly summarized. In order to be entitled to recover on the first cause of action, under the Jones Act, the appellant must show:

- (1) That he was injured while "in the course of his employment as a seaman."
- (2) That such injury was occasioned by the negligence of the appellee.

The appellant in his brief has devoted considerable space to sustain the proposition that he was a seaman within the meaning of the Jones Act. The appellee does not question that appellant was a seaman under the construction given to that word by the courts under the Jones Act. The appellee does, however, maintain that at the time of his injury appellant was not in the course of his employment and, further, there

was no showing of negligence upon the part of the appellee in causing the injuries which the appellant sustained.

In order to recover on the second cause of action, under the general maritime law, it was necessary for the appellant to show that he was injured while "in the service of the ship." Negligence or fault upon the part of the appellee is in no way essential to the maintenance of this cause of action. Consequently the appellee, as to this cause of action, contends only that appellant was not "in the service of the ship" at the time when he sustained the injuries.

THERE WAS A COMPLETE FAILURE OF PROOF UPON THE ISSUE OF NEGLIGENCE, AND CONSEQUENTLY THE FIRST CAUSE OF ACTION WAS PROPERLY DISMISSED

The appellant's case upon the first cause of action, under the Jones Act, is predicated on negligence, which he must prove, and negligence is to be determined by the usual common law standards.

This Court, in *De Zon v. American President Lines, Limited*, 129 F. (2d) 404, at page 407, said:

"* * * but we must also be mindful of the fact that although the Jones Act has given 'a cause of action to the seaman who has suffered personal injury through the negligence of his employer' (287 U.S. 372, 53 S. Ct. 174, 77 L. ed. 368), still it does not make that negligence which was not negligence before, does not make the employer responsible for acts or things which do not constitute a breach of duty. 'A seaman is not entitled to compensation or indemnity in the way

of consequential damages for disabilities or effects occasioned by the sickness or injury, except in case of negligence.' 24 R.C.L. §218, p. 1164."

And the Circuit Court of Appeals for the Sixth Circuit, in *Pittsburgh S. S. Co. v. Palo*, 64 F.(2d) 198, announced the same rule in the following language:

"But conceding that the risk of injury was not assumed in the present case, all the authorities seemingly proceed upon the hypothesis that, in order to maintain an action under this section, negligence (as defined by the common law) must be shown. Cf. *Panama R. R. v. Vasquez*, 271 U.S. 557, 559, 46 S. Ct. 596, 70 L. ed. 1085; *Baltimore S. S. Co. v. Phillips*, 274 U.S. 316, 324, 47 S. Ct. 600, 71 L. ed. 1069; *Lindgren v. United States*, 281 U.S. 38, 46, 50 S. Ct. 207, 74 L. ed. 686. The shipowner is not an insurer of the safety of his seamen, and the burden of establishing negligence rests upon plaintiff. *Burton v. Greig*, 271 F. 271 (C.C.A. 5)." (p. 200)

The same governing general principles are announced by the Supreme Court of the State of Washington in *Finnemore v. Alaska Steamship Co.*, 13 Wn. (2d) 276, 124 P.(2d) 956, in the following language:

"This action was brought under the Jones Act, Title 46 U.S.C.A. §688, which provides in part that any seaman who shall suffer personal injury in the course of his employment may, at his option, maintain an action for damages at law for such injury. In order to maintain an action for damages under this section, negligence must be shown, and the burden of establishing such negligence rests upon the plaintiff. *Pittsburgh S. S. Co. v. Palo*, 6 Cir., 64 F.(2d) 198;

The Richelieu, D.C., 27 F.(2d) 960, 1928 A.M.C. 1143, at pages 1164, 1165." (p. 959)

An examination of the record in this case clearly reveals that the appellant has not sustained the burden of proving negligence essential to his recovery. He asserts that negligence is established by the fact that the Captain of the ship had on several occasions prior to the accident permitted the owners of the guns to shoot them from a point at or near the rail, at objects out to sea. The appellant did not offer any evidence which would even remotely suggest that any of the shooting which the Captain permitted was ever conducted in a careless or negligent manner prior to the accident. On the contrary, insofar as he has been at all specific, his evidence would indicate that the shooting was carefully conducted on such occasions.

In order to warrant a finding of negligence under the evidence in the case, the Court would have to say that the simple fact of granting permission to shoot under any circumstances would constitute negligence upon the part of the Captain. Certainly no rule of such broad import and implications is tenable. The mere fact that the Captain permitted guns to be shot is in no way indicative of carelessness on his part. On the contrary, it is impossible to imagine any safer place for the firing of guns than from the rail of the ship, with the bullets directed out to the open sea. Certainly such a practice suggests no reasonable likelihood of peril to anyone who is on board the ship. In order to make out a case of negligence on the part of the Captain the appellant of necessity had to show some circumstances which would indicate to a reason-

able person that the practice indulged in would have the probable effect of causing injury to someone aboard the ship.

It is no doubt unnecessary to remind this Court that the classic and standard definition of negligence is that it consists of the failure to exercise such care as a reasonably prudent person would exercise under the same or similar circumstances. Thus one of the absolute essentials for determining whether negligence exists in a particular case involves an examination into what the attendant circumstances were. Here we have practically no details at all as to surrounding circumstances. We have only the bare fact that the Captain had not objected to the men shooting in a manner which appears to have been entirely safe to all concerned. There is no evidence showing that a course of action which might be entirely safe was in fact dangerous.

We are certain that no court would be willing to adopt the rule that a person is negligent simply because he had a right to control the use of a gun by another, and that a third person was shot by reason of the negligence of the person who had possession of the gun. The implications of such a rule would be startling to say the least. If, for example, the owner of a gun were to hand it to another with permission to shoot it at a target situated in a spot clearly safe for that purpose, and the person to whom the gun was then entrusted should, without any previous warning, proceed to shoot a bystander as a result of negligent handling of the gun, in a manner entirely otherwise than for which it was entrusted to him, certainly the

owner of the gun would not be liable. The facts here are not essentially different. The Captain, as a reasonable person, could not have anticipated, when he simply permitted the men to shoot from the rail, that at some later time one of them would suddenly rush on deck with his rifle, in response to call from the appellant that sea lions had been sighted, and would then suddenly and carelessly shoot the appellant in the manner which he has described.

Not only does the evidence not warrant any finding of negligence, but it clearly appears that the acquiescence of the Captain in the earlier target shooting was not the proximate cause of the accident. Rather the appellant's injuries arose out of an entirely new type of situation—shooting at sea lions—which arose on the spur of the moment, and which the Captain had, for all that appears in the record, neither time nor opportunity to prevent. The situation is thus exactly as though the Captain had permitted the men, on a number of previous occasions, to engage in a game intrinsically harmless, and then suddenly, on a later occasion, one man should depart from the normal course of the game and suddenly commit an assault on another. The permission to do that which was in and of itself harmless could not be the proximate cause of the injury occasioned by a departure from the course permitted.

We do not wish to belabor a point that seems to us so clearly unanswerable. This Court is confronted by a record which the appellant made. The burden was on him to prove negligence. He brought before the Court a most meager statement of the circum-

stances, and the consequent deficiency of his proof defeats his recovery. Much as we sympathize with the appellant for the injuries which he sustained, he is not entitled to recover for those injuries under the Jones Act, unless he proves that they were proximately caused by the negligence of the appellee, which he has not done.

There is a dearth of decisions upon facts closely similar to those involved in this case. Undoubtedly like situations have existed before, and the very absence of reported decisions suggests that injured persons have recognized the impossibility of fixing liability upon evidence so general and so flimsy. There are, however, innumerable decisions which recognize the necessity of the injured person proving some facts from which carelessness could reasonably be inferred. The following cases of this character are sufficiently parallel with the facts in the case at bar to sustain the appellee's position:

In *Pittsburgh S. S. Co. v. Palo, supra*, 64 F.(2d) 198, the Circuit Court of Appeals for the Sixth Circuit held that there was a failure of proof of negligence. In that case the plaintiff maintained that the shipowner was negligent in that it furnished defective appliances. In arriving at his decision the Court said:

“But we think that the court committed a more fundamental error in not directing a verdict for the defendant for want of substantial evidence of negligence in respect of both causes of action. In neither were facts shown which should lead the defendant to anticipate the danger of injury to its seamen by virtue of the existing condition of the ship's appliances. Whether or not the fact

that injury of some sort might reasonably have been foreseen bears a proper part in the application of the doctrine of proximate cause (see *Johnson v. Kosmos Portland Cement Co.* (C.C. A.) 64 F.(2d) 193, and *Smith v. Lampe* (C.C. A.) 64 F.(2d) 201, decided at this session), *it is now firmly established that no act or omission may be considered negligent unless the danger of injury was reasonably foreseeable.* In *Lincoln Gas & Electric Co. v. Thomas*, 74 Neb. 257, 260, 104 N.W. 153, 154, the court thus expressed the same thought: 'It is of the essence of actionable negligence that the party charged should have knowledge that the act complained of was such an act of omission or commission as might, within the domain of probability, cause some such an injury as that complained of.' In *Hope v. Fall Brook Coal Co.*, 3 App. Div. 70, 75, 38 N.Y. S. 1040, 1043, the court says: 'The circumstances necessary to be known before the liability for the consequence of an act or omission will be imposed must be such as would lead a prudent man to apprehend danger.' See, also *Burton v. Greig*, *supra*; *Waters-Pierce Oil Co. v. Van Eldren*, 137 F. 557 (C.C.A. 8); *Carey v. Baxter*, 201 Mass. 522, 525, 87 N.E. 901; *Stedman v. O'Neil*, 82 Conn. 199, 72 A. 923, 22 L.R.A. (N.S.) 1229; *Wickert v. Wisconsin Central R. Co.*, 142 Wis. 375, 125 N.W. 943, 20 Ann. Cas. 452. *In view of these decisions, and many others, it is not sufficient to show simply that a defect existed; the defect must be of such nature that the defendant should reasonably have apprehended the danger of injury.*" (p. 200) (Italics ours)

In *Birks v. United Fruit Company, Inc.*, a decision of the District Court for the Southern District of New

York, reported in 48 F.(2d) 656, the plaintiff's complaint was dismissed on the ground that it did not state a cause of action. It alleged that the plaintiff had been assaulted by other members of the crew who had felonious and criminal propensities. In holding this to be an insufficient allegation of negligence the Court said:

“The allegation that members of the crew had felonious and criminal propensities does not sustain a cause of action in negligence in the absence of an allegation that the defendant knew of these propensities or had knowledge of facts putting it on notice. See *The Rolph* (C.C.A.) 299 F. 52, certiorari denied 266 U.S. 614, 45 S. Ct. 96, 69 L. ed. 468.” (p. 657)

Wilcox v. United States, 32 F. Supp. 947, a decision of the District Court for the Southern District of New York, likewise involved an assault by other members of the crew. The facts were that the persons who committed the assault had been drinking and had tried to prevail upon the rest of the crew to postpone the sailing of the ship. When the others, including the plaintiff, insisted upon commencing the voyage, the assault occurred. The master knew that the crew had been arguing on this subject. It was contended that he was negligent in permitting the persons who committed the assault to remain at large. In denying that this constituted negligence, the Court said:

“Was the master negligent in allowing Byrne and Collins to remain at large? That is the only issue in the case, and the answer depends on whether the master should reasonably have an-

anticipated that Byrne and Collins would inflict bodily injury on any of the crew. Byrne and Collins had done nothing previously to indicate that they were vicious characters. They had concededly been drinking, but were not drunk, and knew fully what they were about. There is no evidence, either, that during the discussion in the messroom they made any threats against other members of the crew."

* * * * *

"The libellants lay considerable stress on the testimony that the master said he would 'guarantee' the safety of the men, and 'protect' them in their work. The master denied that he made any such statement, and I am inclined to accept his testimony. But even if these statements were made, I do not believe that they are sufficient to charge the master with knowledge that Byrne and Collins were vicious characters who should have been restrained. I think, therefore, that on the whole case the charge of negligence has not been proved." (p. 949)

In *Finnemore v. Alaska Steamship Company, supra*, 13 Wn.(2d) 276, 124 P.(2d) 956, the Court quoted with approval from *Pittsburg Steamship Co. v. Palo, supra*, 64 F.(2d) 198. As a preliminary to the quotation the Washington court said:

"It is also the well established rule that no act or omission of the shipowner may be considered negligent unless the danger of injury was reasonably foreseeable."

After quoting from the *Pittsburgh Steamship Company* case the Court refers to and quotes from a considerable number of decisions from other jurisdic-

tions. All of these quotations are to the same effect, and the various courts in forceful language point out the necessity of some proof that would reasonably put the party charged with negligence upon warning of the fact that the consequences which occurred were probable under the circumstances.

In *O'Brien v. Calmar Steamship Corp.*, 104 F.(2d) 148, the Circuit Court for the Second Circuit held that there was no negligence where it appeared that the plaintiff had fallen by reason of stepping on a piece of pipe, there being no proof as to how long the pipe had been there, or of the fact that the defendant or its agents should have known that it was present.

The principles which these cases announce are so fundamental that an extension of citations would simply be tedious. They demonstrate the rule for which the appellee contends, namely, that proof of negligence in this case was entirely insufficient.

The firearms cases cited by the appellant in his brief are in no sense contrary. As a matter of fact, they support the very position which the appellee takes here. In every one of those cases something more than the mere fact of shooting or permission to shoot was shown. Most of these cases, for example, deal with injuries sustained in shooting galleries maintained in places of amusement, where a large number of persons congregate. On the face of things the shooting of guns in such surroundings is manifestly dangerous unless conducted with extreme care. The situation in places where large numbers of persons congregate is in no way comparable to the facts

which exist in this case. Furthermore, in these cases, the plaintiff in every instance showed some further facts warranting a finding of negligence.

Thus, in *Szesz v. Joyland Company* (Cal.) 257 Pac. 871, the plaintiff was injured when a bullet fired in a shooting gallery glanced back from a complicated metal background into which it was fired and struck the plaintiff while he was standing behind the person who had fired the gun.

In *Larson v. Calder's Park Co.*, 54 Utah 325, 180 Pac. 599, it appeared that the walls of the shooting gallery were full of holes and that the bullet which struck the plaintiff, who was passing along a pathway by the side of the shooting gallery, passed through one of these holes in the course of its flight.

In *Thornton v. Maine State Agricultural Society*, 97 Me. 108, 53 Atl. 979, the bullet went through the rear wall of the shooting gallery and hit the plaintiff, who was on the other side.

In *Olson v. Hemsley*, 40 N.D. 779, 187 N.W. 147, the defendant was shown to have left a loaded gun lying around where he could reasonably have expected it to come into the possession of a young boy, who was known to be careless.

In each of these cases, as well as all of the others cited by the appellant, the special facts shown did present an issue of fact upon the question of negligence.

We do not for a moment question that if one person, having the power to govern the actions of another, permits the other to shoot a gun *under circum-*

stances where he has reason to believe that the gun will be handled in a reckless manner, he will be liable for the consequences which he should have foreseen. The distinction between the cases to which that rule applies and the present case rests on the fact that there is some evidence of special conditions upon which to base a finding of negligence, which is not to be found in the record in this case.

We wish to point out that the appellant does not in his brief maintain that the appellee can be held liable because of the negligence of Varner, the man who did the shooting. Were he to do so, such a contention would be untenable because there is nothing in the record to indicate that at the time when the shooting occurred Varner was acting in the course of any employment for the appellee. As a matter of fact, the record is entirely barren as to the nature of the relationship existing between Varner and the appellee, and furnishes no basis for holding the appellee liable by virtue of any act or omission upon Varner's part. It is well established under the decisions that where it is sought to hold a shipowner liable for negligence on the part of one of the shipowner's employees, it must appear that the employee was at the time acting within the course of his employment.

Rourange v. Colombian S. S. Co., Inc., 5 N.Y.S.(2d) 537, affirmed by Court of Appeals of New York, 20 N.E.(2d) 28;

Panama Railroad Co. v. Johnson, 264 U.S. 375;

Sibley v. Barber S. S. Lines (Dist. C. S.D., N.Y.) 57 F.(2d) 318;

In re Southern Pacific Co. (Dist. C. S.D. N.Y.) 30 F.(2d) 723;

Nelson v. American West African Line, Inc. (C.C.A. 2) 86 F.(2d) 730;

Lyke Bros. S. S. Co. v. Goubaugh (C.C.A. 5) 128 Fed. 387.

THE EVIDENCE SHOWS THAT THE APPELLANT WAS NOT ACTING IN THE COURSE OF HIS EMPLOYMENT AT THE TIME HE RECEIVED HIS INJURY, AND CONSEQUENTLY THE FIRST CAUSE OF ACTION WAS PROPERLY DISMISSED

The remedy afforded to an injured seaman under the Jones Act exists only when the injury occurred in the course of the seaman's employment. The exact language of the Act is as follows:

“Any seaman who shall suffer personal injury *in the course of his employment* may, at his election maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.”
(Italics ours)

So far as we have been able to ascertain, there is no decision construing and applying this phrase under the Jones Act upon facts like those in the case now before this Court.

It is true that the courts have held that a seaman is engaged in the course of his employment while resting in the sleeping quarters provided upon the ship (*McCall v. Inter-Harbor Navigation Co.* (Ore.) 59 P.(2d) 697); in going to get a drink of water while off duty (*Holm v. Cities Service Transportation Co.* (C.C.A. 2) 60 F.(2d) 721; and while leaving the ship on being told that his services will not for the time being be required (*Wong Bar v. Suburban Petroleum Transport, Inc.* (C.C.A. 2) 119 Fed. 745). All of these instances, however, involve cases in which the injured seaman is doing something incidental and reasonably necessary to his employment. In no case of which we are aware has liability been upheld where the seaman was doing something not necessarily incident to his employment, but of interest solely to himself.

Clearly Congress, by including the words "in the course of his employment" in the statute as a condition to the right of recovery, meant to exclude certain cases from the field of liability. If Congress had meant to authorize the seaman to maintain an action for any injury sustained in consequence of the negligence of the shipowner while the seaman was on board ship, it would no doubt have said so in the statute. By using the words "in the course of his employment" it clearly contemplated that the new remedy accorded by the Jones Act should not be available unless the

injury occurred to the seaman while actually performing his work or doing some act necessarily incident thereto.

In ascertaining the Congressional intention certain underlying facts must be kept in mind. Under the general maritime law, at the time the Jones Act was adopted, the seaman possessed a right of action for his wages, maintenance and cure, and this right of recovery was in no way dependent upon proof of the shipowner's negligence. In addition, under the general maritime law, the seaman had a right of action to recover for personal injuries if the ship were unseaworthy. Prior to the adoption of the Jones Act the seaman had no right to sue the shipowner for compensation for injuries other than the two rights of action above mentioned. *The Osceola*, 189 U.S. 158, 23 S. Ct. 483, 47 L. ed. 760. The right to sue under the Jones Act derives its vitality and existence from the statute only. It seems clear that Congress intended to limit this right and leave the sailor who could not bring himself within the terms of the Jones Act, as so limited, to the prosecution of one or other of the actions available to him under the general maritime law.

In the present case there can be no doubt that the appellant was not engaged "in the course of his employment" unless that phrase is held to be utterly without meaning, or given such an extremely liberal construction as to include virtually anything that the seaman does while aboard ship. The pointing out of sea lions to other persons on board the boat does not, by the remotest stretch of the imagination, fall with-

in the purview of any duties of the appellant. The only positive duties which he claims to have had aboard the ship were to stand a watch in the engine room. Incidental to that duty he no doubt would, under the decisions, remain in the course of his employment while resting in his bunk or eating his meals, or doing any other act reasonably required to fit himself to discharge his expressed duties in the engine room. When, however, he departed from this field into a line of activity of interest and concern only to himself, he was no longer engaged in the course of his employment, and if injured at such a time, he cannot bring himself within the scope of the statute.

The phrase "in the course of his employment" has received judicial interpretation on innumerable occasions in cases arising outside of the Jones Act. For the most part these cases fall into two categories. The first is that class of case in which a third person seeks to hold the master liable for injuries occasioned by the act or omission of the servant under the doctrine of *respondeat superior*. The second is the line of cases under which an injured servant seeks recovery for personal injuries under Workmen's Compensation Laws. This latter class of authority is especially apt here, because the broad considerations of public policy which underlie Workmen's Compensation Laws require a liberal construction in favor of the servant. Nevertheless, in determining the rights of injured employees under these laws, the courts have held that the phrase "in the course of his employment" comprehends only those activities of the workman which further the business of the

master. This is the same rule as that laid down in the *respondeat superior* cases. The following are typical of decisions holding that an employee doing something of personal interest to himself is not in the course of his employment under Workmen's Compensation Statutes.

Hill v. Department of Labor and Industries, 173 Wash. 575, 24 P.(2d) 95;

Beamer v. Stanley Company of America, 295 Pa. 545, 145 Atl. 675;

Torrey v. Industrial Accident Commission of State of California, 132 Cal. App. 303, 22 P.(2d) 525;

Kinthead v. Management & Engineering Corporation (Mo. App.) 103 S.W.(2d) 545;

U. S. Fidelity & Guaranty Co. v. Industrial Commission, 43 Ariz. 305, 30 P.(2d) 846;

Stornelli v. Duluth etc. Ry. Co., 193 Mich. 674, 160 N.W. 415.

Of the foregoing decisions, the decision of the Supreme Court of Washington in the *Hill* case contains the most complete discussion of the rule.

There is nothing novel in denying the employee a right to recover under the statute which creates his cause of action, when he cannot bring himself within the terms of the statute. Precisely the same situation obtains under the Federal Employers Liability Act, governing the rights of railroad employees. The situation under that Act is especially persuasive in cases under the Jones Act because the latter Act incorporates certain procedural provisions of the Fed-

eral Employers Liability Act, and in broad outline the two Acts are similar in purpose. Under the Federal Employers Liability Act, 45 U.S.C.A. §51, an employee is given the right to recover if injured "while he is employed by such carrier in such commerce." It will be seen that the qualification here is not expressed in the words "in the course of his employment," but rather while employed "in such commerce," the word "such" having reference to interstate commerce, previously mentioned in the section.

Courts have on numerous occasions held that railroad employees who have received injuries, but who were not at the time engaged in interstate commerce, are not entitled to recover under the Act. Typical of these cases are *Illinois Central Ry. v. Archer* (Miss.) 74 So. 135; *Illinois Central Ry. Co. v. Behrens*, 233 U.S. 473, 34 S. Ct. 646, 58 L. ed. 1051; *McBain v. N. P. Ry. Co.* (Mont.) 160 Pac. 654; *Elliott v. Paine* (Mo.) 239 S.W. 851; *Hobbs v. Great Northern Ry.*, 80 Wash. 678, 142 Pac. 20.

If an employee of an interstate railroad, injured by the negligence of the railroad, is not entitled to recover under the Federal Employers Liability Act because he cannot bring himself within the terms of the Act by showing that he was engaged in interstate commerce at the time of his injury, it is equally proper to construe the Jones Act to deny recovery to a seaman who likewise cannot bring himself within the terms of that Act by showing that he is within the requirement of being within the course of his employment.

We have already adverted to the fact that the words

“in the course of his employment” must have been inserted in the Act for a purpose. If they can be extended to cover the facts of the present case, they can be equally extended to cover virtually anything that a seaman would be doing while on board the ship. Any interpretation so broad would in fact write the words entirely out of the statute.

It is the appellee’s position that the Jones Act contemplates that an employee shall recover only when he can show that he was doing the thing which he was employed to do, or something necessary or incidental to that thing, and that when he is engaged in an enterprise simply for his own entertainment, he cannot maintain an action for injuries under the Act, but is remitted to seek redress under the general maritime law, if that redress be available to him.

THE APPELLANT IS NOT ENTITLED TO MAINTENANCE, WAGES AND CURE BECAUSE HE WAS NOT IN THE SERVICE OF THE SHIP AT THE TIME WHEN HE RECEIVED HIS INJURIES

As will appear from the cases hereinafter cited, a seaman, in order to recover under the general maritime law for his maintenance, cure and wages, is required to show that his injury was sustained “in the service of the ship.” As matters stood at the time when this case was tried and decided in the District Court there appeared to be no doubt that the appellant was not entitled to recover under the law as announced prior to that time. This was especially true in the Ninth Circuit under the decision of *Meyer v. Dollar Steamship Line*, 49 F.(2d) 1002. In that case

the meaning of the phrase "in service of the ship" was explored in some detail and it was held that a seaman injured while engaged in some activity of interest only to himself, could not hold the shipowner liable for his wages, maintenance and cure. However, since the trial of this case, the Supreme Court of the United States on April 19, 1943, decided the cases of *Aguilar v. Standard Oil Company of New Jersey*, and *Waterman Steamship Corporation v. Jones*, both dealt with in a single opinion appearing in 63 S. Ct. 930.

In view of the fact that these cases were decided nearly a month before appellant's brief was served, that appellant's counsel was then apparently unaware of their existence, and that appellant's brief advances virtually no argument in support of his contention that he is entitled to wages, maintenance and cure, it rather pains the authors of this brief to be put in a position of bringing these cases up for discussion. However, as members of the bar of this Court, they feel that they would be derelict in their duty if they did not call attention to these decisions.

In these two cases the Supreme Court of the United States extended the meaning of the phrase "in the service of the ship" far beyond what had previously been accepted as the legitimate definition of the phrase. In both of the cases mentioned seaman were injured while on shore leave. In both instances the Supreme Court held that they were in the service of the ship and consequently entitled to wages, maintenance and cure.

The reasoning of the decisions can be best gather-

ed from the opinion, but in substance the Court held that shore leave was a necessary incident to the employment of a seaman, and further held that in view of the fact that the right to wages, maintenance and cure is based upon broad grounds of policy, the phrase should be liberally construed. The Court, however, mentions repeatedly an exception to the rule which will deprive the seaman of the right to recover if guilty of disqualifying conduct. The decisions do not define the limits of the phrase "disqualifying misconduct." If by this phrase it is meant to deprive the seaman of his right to recover only in those instances where he is guilty of misconduct involving some element of moral turpitude, it might appear that the appellant here has a right to recover. After mature consideration, however, we do not believe that the phrase was intended to be so limited. The theory of the *Aguilar* and the *Waterman* cases, as we understand them, is that the right to recover maintenance, wages and cure exists so long as the employee is doing something reasonably necessary to his employment. The moment he departs from that field and does something that can be of no interest to the employer at all, but solely of personal interest to himself, there is no reason why he should be entitled to compensation from the employer.

In a literal sense it is perhaps somewhat harsh to define the conduct of the appellant here, under the present state of the record, as misconduct. In so branding it we do not particularly mean to use that word in any opprobrious sense. It must be kept in mind

that the Supreme Court, in using the phrase, was not considering any detailed instance to which it must apply, but rather made the observation generally in a case in which it had held, as a basic proposition, that the employee was doing something incidental to his work. The Supreme Court had no occasion to define the phrase in detail. We think that when the reasoning of the *Aguilar* and *Waterman* cases is closely scrutinized there is still room for the contention that the appellant has no case under his second cause of action here. This matter, coming before the Court so closely after the decisions of the Supreme Court of the United States in the *Aguilar* and *Waterman* cases, there is naturally no further judicial definition of the limits of the phrase "disqualifying misconduct," and the matter is thus squarely put up to this Court for its own determination on that question.

The appellee most positively takes the position that the *Aguilar* and *Waterman* cases have no bearing upon any question arising under appellant's first cause of action under the Jones Act. Not only are the phrases "in the service of the ship" and "in the course of his employment" different in form, but the basic considerations which go to the interpretation of the two phrases are entirely different. Utterly different considerations control in determining the right of a seaman to recover under the general maritime law, where the shipowner is to a large extent made an insurer of his safety, than exist under the Jones Act, which creates a new remedy based on accepted principles of tort liability only. In the for-

mer case the courts are naturally disposed to be more generous in their interpretations than in the latter.

At most the *Aguilar* and *Waterman* cases can affect only the appellant's second cause of action. As previously stated, we do not believe that the theory and reasoning of those cases are sufficient to warrant a reversal even as to that cause of action.

CONCLUSION

Viewed objectively, the appellant's action at best rests on an extremely weak foundation. Only by grace of a most liberal interpretation can he be said to be a seaman in the commonly accepted sense of that term. Only by giving him the benefit of all the doubt can the story that he told on the witness stand be given full credence, in view of his testimony that he does not know whether Taylor had a gun at the time when the shooting occurred. In other respects his account of the facts leaves much to imagination and speculation.

From whatever angle the case is viewed, the justice of the appellant's demand for compensation is open to the gravest doubt. Without, however, relying on such generalities, we submit that much as we sympathize with appellant's misfortune in receiving his injuries, he cannot hold another party responsible for those injuries without proving, as to his first cause of action under the Jones Act, that the appellee was negligent, and that the appellant was in the course of his employment; and as to his second cause of action for

maintenance, wages and cure, that he was in the service of the ship at the time he was injured. In all sincerity we believe that he has not made out a case under either cause of action.

Respectfully submitted,

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